

UNOFFICIAL COPY

PREPARED BY, AND AFTER
RECORDING RETURN TO:

Michael Weininger, Esq.
LUPEL WEININGER LLP
30 N. LaSalle Street,
Suite 3520
Chicago, Illinois 60602
(312) 260-7700
LW File No. 0148.24



Doc#: 0835939016 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/24/2008 01:25 PM Pg: 1 of 9

LOAN MODIFICATION AGREEMENT

THIS LOAN MODIFICATION AGREEMENT ("**Agreement**") is dated as of November 13, 2008, by and among **Dorchester Commons LLC**, an Illinois limited liability company ("**Borrower**"), **Ali D. Ata** ("**Guarantor**") and **RBS Citizens, National Association**, ("**Lender**") successor by merger to Charter One Bank, N.A., as successor by merger to First National Bank ("**Original Lender**") with its principal office and place of business located at 1215 Superior Avenue, Cleveland, Ohio (Lender, Borrower and Guarantor being sometimes referred to individually herein as a "**Party**" and collectively as "**Parties.**")

RECITALS

A. Pursuant to a Business Loan Agreement dated as of November 13, 2003, by and between Borrower and Original Lender, Borrower executed and delivered to Original Lender that certain Promissory Note with Original Lender as Payee in the Principal Sum of \$3,200,000.00 dated November 13, 2003 (the "**Note**").

B. The Note is secured by that certain Mortgage ("**Mortgage**") dated as of November 13, 2003, executed by Borrower in favor of Original Lender and recorded on December 11, 2003 as Document No. 0334501214 with the Cook County, Illinois Recorder of Deeds encumbering the property commonly known as 1400-1420 East 53rd Street, Chicago, Illinois (the "**Property**"). The Property is legally described on Exhibit A attached hereto.

C. Guarantor unconditionally guaranteed prompt payment of the obligations of the Borrower under the Note and Mortgage pursuant to a Commercial Guaranty dated as of November 13, 2003 (the "**Guaranty**").

D. The Note is further secured by all other instruments and documents executed by or on behalf of Borrower and delivered to Original Lender in connection with the Loan which are hereinafter collectively referred to as the "**Other Security Documents.**" (Such Other Security Documents, together with the Note, the Mortgage, and the Guaranty being hereinafter collectively, the "**Loan Documents.**")

E. Lender is the successor by mergers to Original Lender.

UNOFFICIAL COPY

F. Borrower and Guarantor acknowledge and agree that the principal balance of the Note and accrued unpaid interest owed Lender under the Note to and including November 24, 2008 are set forth below:

Principal	Interest
\$2,959,249.73	\$4,915.64

Borrower and Guarantor acknowledge and agree that (i) the Loan Documents are authentic, valid and enforceable; (ii) the security interests, liens and Mortgage granted to Lender under the Loan Documents are valid, perfected, choate, enforceable and existing liens; and (iii) Borrower and Guarantor do not have any defense, offset, recoupment or claim with respect to the Loan Documents or otherwise against Original Lender or Lender.

G. The Note matured November 13, 2008.

H. Borrower and Guarantor have requested and Lender has agreed to enter into this Agreement, extending the Maturity of the Note upon the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the mutual promises of the Parties hereto and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, IT IS HEREBY AGREED AS FOLLOWS:

1. Recitals. All of the recitals set forth above are fully incorporated herein by reference with the same force and effect as though restated herein.
2. Defined Terms.
 - (a) Unless otherwise indicated or herein defined, all defined terms shall have the meaning ascribed to them in the Loan Documents.
 - (b) "Interest Period" means initially the period commencing on November 13, 2008 and ending on the 13th day one month later and thereafter each one month period ending on the 13th day of such month.
 - (c) "30-Day LIBOR Rate" means relative to any Interest Period, the offered rate for delivery in two London Banking Days (as defined below) of deposits of U.S. Dollars which the British Bankers' Association fixes as its LIBOR rate as of 11:00 a.m. London time on the day on which the Interest Period commences, and for a period approximately equal to such Interest Period. If the first day of any Interest Period is not a day which is both (i) a Business Day, and (ii) a day on which U.S. dollar deposits are transacted in the London interbank market (a "London Banking Day"), the 30-Day LIBOR Rate shall be determined in reference to the next preceding day which is both a Business Day and a London Banking Day. If for any reason the LIBOR Rate is unavailable and/or the Payee is unable to determine the 30-Day LIBOR Rate for any

UNOFFICIAL COPY

Interest Period, the 30-Day LIBOR Rate shall be deemed to be equal to the Payee's Prime Rate per annum.

(d) "Prime Rate" means the rate of interest announced by the Payee in Providence, Rhode Island from time to time as its "Prime Rate." The Borrower acknowledges that the Payee may make loans to its customers above, at or below the Prime Rate. Interest accruing by reference to the Prime Rate shall be calculated on the basis of actual days elapsed and a 360-day year.

3. Conditions Precedent. Lender's obligations under this Agreement shall be expressly conditioned on the receipt by Lender, on or before December 5, 2008, of (i) four (4) executed copies of this Agreement; (ii) a loan modification fee in the amount of \$29,597.00; and (iii) reimbursement to Lender for its attorneys' fees and costs incurred in connection with this Agreement in the amount of \$2,818.00.

4. Amendments to Loan Documents. The Loan Documents are hereby amended and modified as follows:

(a) Modification of Maturity Date.

(i) The Maturity Date of the Note is extended from November 13, 2008 to May 13, 2009; and

(ii) Wherever November 13, 2008 appears in the Loan Documents and the Note it shall be replaced with May 13, 2009.

(b) Modification of Interest Payments

(i) The "Interest Rate" shall mean a rate equal to the sum of the 30-Day LIBOR Rate for such Interest Period plus 4.5% effective on and after November 13, 2008;

(ii) Interest on the outstanding principal amount of the Note shall accrue and be paid at the Interest Rate.

(c) Payment. Borrower shall pay the Note in regular payments of principal in the amount of \$9,864.17 plus interest as it accrues under the Loan Documents. The first payment of principal and interest is due December 13, 2008 and all subsequent payments are due on the 13th day of each month after that with the final payment of principal and interest due on May 13, 2009.

5. Reaffirmation of Loan Documents. Except as may be expressly set forth herein to the contrary, the Loan Documents remain unmodified, and all other terms and conditions thereof remain in full force and effect.

6. Reaffirmation of Guaranty. Guarantor specifically ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The Guaranty continues to be the valid and binding obligation of

UNOFFICIAL COPY

Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder.

7. Captions, Counterparts. The captions used herein are for convenience of reference only and shall be deemed to limit or affect the construction and interpretation of the terms of this Agreement. This Agreement may be executed in any number of counterparts or in any number of counterpart signature pages, all of which together shall be deemed the original and constitute one and the same instrument.

8. Choice of Law, Severability and Consent to Jurisdiction. This Agreement and the respective rights and obligations of the parties hereto, shall be governed by and construed according to the internal laws of the State of Illinois (without regard to its conflict of laws principles). The parties agree and stipulate that this Agreement was executed, delivered and accepted by Lender in Illinois, all payments shall be made to Lender and accepted by Lender in Illinois, and that Illinois has a substantial relationship to the parties and to the underlying transaction contemplated by this Agreement. Notwithstanding the foregoing, the parties agree that in the event of any action by the Lender in enforcing any of the Loan Documents, regardless of where the collateral is located, the parties agree and intend that the laws of the State of Illinois shall govern the right of Lender to collect or obtain a judgment and each party hereto consents to the jurisdiction of any federal or state court located in Cook County, Illinois. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected thereby and the provisions of this Agreement shall be severable in any such instance.

9. No Other Modification. Except for the modifications stated herein the Loan Documents are not otherwise changed, modified or amended.

10. Reviewed by Attorneys. The Borrower and Guarantor each represent and warrant to the Lender that they (a) understand fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement, (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and any documents executed in connection herewith with, such attorneys and other persons as Borrower and Guarantor may wish, and (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its/his own free will and accord and without threat duress or other coercion of any kind. The parties hereto acknowledge and agree that neither this Agreement nor the other documents executed pursuant hereto shall be construed more favorably in favor of one than the other based upon which party drafted the same, it being acknowledged that all parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents executed pursuant hereto or in connection herewith.

11. Agreements and Interpretation. No Agreement or modification of any provision of the Loan Documents shall be effective without the written agreement of Borrower, Guarantor and the Lender and no waiver of any provision of the Loan Documents, or consent to any departure by the Borrower and Guarantor therefrom, shall be effective without the written consent of the Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand upon the Borrower or Guarantor in any case shall entitle Borrower or Guarantor to any other or further notice or demand in similar or other circumstances. No prior drafts of this Agreement, or any negotiations

UNOFFICIAL COPY

leading up to or regarding the terms contained in those drafts, shall be admissible in any court to interpret the terms of this Agreement, the parties hereto agreeing that this Agreement and the documents executed pursuant to or in furtherance of this Agreement constitute the full, final and complete expression of the Parties' agreement, and supersedes and integrates all the prior written and oral understandings regarding the terms of this Agreement.

12. Release. Without limiting the generality of the foregoing, Borrower and Guarantor, on their own behalf and on the behalf of their representatives, trustees, affiliated and related entities, successors and assigns (hereinafter collectively referred to as the "**Borrowing Group**") hereby waive, release and forever discharge Lender, and its officers, directors, subsidiaries, affiliated and related companies or entities, agents, servants, employees, shareholders, representatives, successors, assigns, attorneys, accountants, assets and properties, as the case may be from and against all manner of actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, obligations, liabilities, costs, expenses, losses, damages, judgments, executions, claims and demands, of whatsoever kind or nature, in law or in equity, whether known or unknown, whether or not concealed or hidden, arising out of or relating to any matter, cause or thing whatsoever, that any of the Borrowing Group, jointly or severally, may have had, or now have or that may subsequently accrue against the Lender by reason of any matter or thing whatsoever arising out of or in way connected to, directly, or indirectly, the Loan Documents through the date hereof. Borrower and Guarantor acknowledge and agree that Lender is specifically relying upon the representations, warranties, covenants and agreements contained herein and that such representations, warranties, covenants and agreements constitute a material inducement to enter into this Agreement.

13. Integration Clause. Prior drafts of this Agreement, or any negotiations leading up to or regarding the terms contained in those drafts, shall not be admissible in any court to interpret the terms of this Agreement, the Parties hereto agreeing that this Agreement and the documents executed pursuant to or in furtherance of this Agreement constitute the full, final and complete expression of the Parties' agreement, and supersedes all the prior written and oral understandings regarding the terms of this Agreement.

14. Fees and Costs.

(a) In addition to any obligation to pay attorneys' fees under the Loan Documents, Borrower and Guarantor shall pay any and all attorneys' fees, costs and expenses incurred by Lender:

- i. In any action in which Lender is named a party as a result of or involving the Loan Documents;
- ii. In any bankruptcy proceeding filed by Borrower or Guarantor; and
- iii. Any additional fees and costs related to the preparation and recording of this Agreement not included in paragraph 3 of this Agreement with such additional fees and costs to be paid by Borrower or Guarantor within thirty (30) days of receipt of Lender's statement or invoice for such fees and costs.

UNOFFICIAL COPY

(b) All such amounts due hereunder not otherwise paid shall be additional indebtedness under the Loan Documents

15. Limitation of Relationship Between the Parties. The relationship of the Lender, Borrower and Guarantor has been and shall continue to be, at all times, that of creditor and debtor. Nothing contained in this Agreement, or any instrument, document or agreement delivered in connection therewith, shall be deemed or construed to create a fiduciary relationship between the parties.

16. Waiver by Borrower and Guarantor. Borrower and Guarantor hereby expressly, irrevocably and unconditionally waive:

(a) Any and all notices of default, cure or grace periods and demands set forth in any of the Loan Documents or any note, guaranty, mortgage, security agreement or document executed in connection with or in furtherance of this Agreement;

(b) Any and all rights of reinstatement or rights of redemption set forth in any Illinois law or statute or the Loan Documents;

(c) ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER ANY OF THE LOAN DOCUMENTS OR THIS AGREEMENT, OR (2) IN ANY WAY CONNECTED WITH OR RELATED TO OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY OF THE LOAN DOCUMENTS OR THIS AGREEMENT, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(d) EVERY DEFENSE, INCLUDING A DEFENSE BASED ON THE IMPLIED COVENANT OF GOOD FAITH, CAUSE OF ACTION, COUNTERCLAIM OR SETOFF WHICH BORROWER OR GUARANTOR MAY NOW HAVE TO ANY ACTION BY LENDER IN ENFORCING THE LOAN DOCUMENTS, THIS AGREEMENT OR ANY DOCUMENT EXECUTED IN CONNECTION WITH OR IN FURTHERANCE OF THIS AGREEMENT.

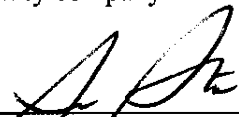
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

UNOFFICIAL COPY

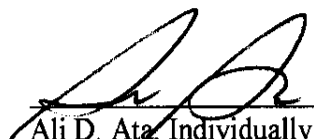
IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

BORROWER:

Dorchester Commons LLC, an Illinois limited liability company

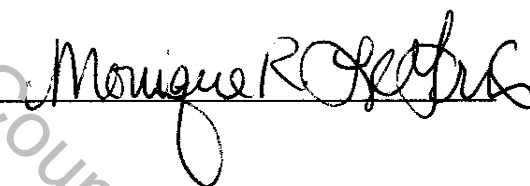
By: 
Its: Manager

GUARANTOR:


Ali D. Ata, Individually

LENDER:

RBS Citizens, National Association, successor by merger to Charter One Bank, N.A., successor by merger to First National Bank

By: 

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, FRANCIS J. ZEMAN JR a Notary Public in and for said County, in the State aforesaid, do hereby certify that Ali D. Ata, 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 free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 9th day of December, 2008.

Francis J Zeman Jr

 Notary Public



My Commission Expires:
 _____, 20__

STATE OF ~~OHIO~~ MICHIGAN)
) SS
) OAKLAND)
 COUNTY OF CUYAHOGA)

I, KAREN DUFF a Notary Public in and for said County, in the State aforesaid, do hereby certify that MONIQUE R. LEGRIS a VICE PRESIDENT of RBS Citizens, National Association, Successor by Merger to Charter One Bank, N.A., successor by merger to First National Bank, 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/she signed and delivered the said instrument as his/her free and voluntary act and as the free and voluntary act of said National Association for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 9th day of DECEMBER, 2008

Karen J Duff

 Notary Public

My Commission Expires:
 _____, 20__

KAREN J. DUFF
NOTARY PUBLIC - MICHIGAN
MACOMB COUNTY
MY COMMISSION EXPIRES MARCH 9, 2014.
ACTING IN MACOMB COUNTY

UNOFFICIAL COPY

EXHIBIT A TO DORCHESTER LOAN MODIFICATION

Property of Cook County Clerk's Office

LOTS 7, 8 AND 9 (EXCEPTING THEREFROM THE EAST 75.40 FEET OF SAID LOTS 7, 8 AND 9) TOGETHER WITH ALL OF LOTS 10, 11 AND 12 IN BLOCK 22, HYDE PARK, IN THE SOUTHEAST 1/4 OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**The Real Property or its address is commonly known as 1400-1420 East 53rd Street, Chicago, IL 60615.
The Real Property tax Identification number is 20-11-410-020-0000**

EXHIBIT A