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Doc#: 0836618082 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/31/2008 02:22 PM Pg: 1 of 9

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MORTGAGE AND LOAN DOCUMENT MODIFICATION AGREEMENT

THIS MORTGAGE AND LOAN DOCUMENT MODIFICATION AGREEMENT (this "Agreement") is made as of the 4th day of December, 2008, by and among **ELMHURST AND DEMPSTER LLC**, an Illinois limited liability company ("Borrower") and **PARK NATIONAL BANK, N.A.**, a national banking association ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Two Million four Hundred Thousand and no/100 Dollars (\$2,400,000.00), pursuant to a Construction Loan Agreement dated June 13, 2008 between Lender and Borrower (the "Loan Agreement") as evidenced by a Promissory Note dated as of June 13, 2008, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

This document prepared by and after recording return to:

Michael S. Kurtzon, Esq.
Dykema Gossett PLLC
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

Permanent Index Numbers:

08-24-100-003-0000
08-24-100-005-0000

Address of Property:

851 South Elmhurst Road
Des Plaines, Illinois

354605 DR 10P1 OFC

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B. The Loan is secured by a Construction Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated June 13, 2008 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on August 18, 2008 as Document No. 0823122068 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit "A" hereto ("Property"), (ii) that certain Assignment of Rents dated June 13, 2008, from Borrower to Lender and recorded in the Recorder's Office on June 18, 2008 as Document No. 0817016015 (the "Assignment of Rents"); (iii) that certain Hazardous Substances Certificate and Indemnity dated June 13, 2008 from Borrower and Peter T. Theodore ("Guarantor") to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Loan Agreement, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty of Completion and Performance dated June 13, 2008 from Guarantor to Lender (the "Guaranty").

D. Concurrently herewith, Lender and Borrower have entered into an Amended and Restated Promissory Note of even date herewith which amends and restates the Note in its entirety.

E. \$1,784,313.20 of the Loan has been disbursed as of October 29, 2008.

F. Borrower desires to amend the Loan Documents in order to provide for (a) an increase in the amount of the Loan to \$3,652,000.00, and (b) certain other modifications to the term and conditions of the Loan as more fully described herein.

G. Concurrently herewith, Borrower, Lender and Guarantor are entering into a Modification of Loan Documents providing for additional modifications to the Loan Agreement ("Modification Agreement").

AGREEMENTS:

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the mutual receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Definitions.** All capitalized terms used but not otherwise defined herein in this Agreement shall have the same meanings ascribed to such capitalized terms in the Loan Agreement, as amended by this Agreement.

2. **Note.** The Note has been amended and restated in its entirety by the Amended and Restated Note of even date herewith between Lender and Borrower (the "Amended Note"). The Amended Note shall constitute the "Note" as defined and referred to in the Loan Agreement and the other Loan Documents.

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3. **Loan Increase.** Pursuant to the Modification Agreement, the amount of the Loan has been increased from \$2,400,000.00 to \$3,652,000.00. All references in the Loan Agreement and other Loan Documents to the stated principal amount of the Note are hereby changed from \$2,400,000.00 to \$3,652,000.00. The Mortgage and other Loan Documents shall evidence and secure an indebtedness of the Borrower in the stated principal amount of \$3,652,000.00. all references in the Mortgage and other Loan Documents to the stated principal amount of the Loan are hereby changed from \$2,400,000.00 to \$3,652,000.00.

4. **Remaining Loan Proceeds.** The Borrower and Lender acknowledge that (a) \$1,784,313.20 of the proceeds of the Loan has previously been disbursed and (b) \$1,867,686.80 remains undisbursed (the "Undisbursed Loan Proceeds").

5. **Limited Amendment; Ratification.** This Agreement is given solely to amend the Loan Documents as set forth herein. No further amendment or modification is made or intended, and the terms and provisions of the Loan Documents, except as expressly modified herein, continue in full force and effect after the date hereof. The warranties, representations, covenants and agreements contained in the Loan Documents, as herein expressly amended, are hereby specifically reaffirmed and remade by Borrower and Guarantor and each Loan Document, as herein expressly amended, is hereby ratified, approved and confirmed in every respect. Borrower also hereby ratifies and confirms, as of the date of the Loan Documents and as of the date hereof, the liens, encumbrances and security interests in and on the Premises and the Real Estate intended to be created by the Mortgage, as amended hereby.

6. **No Release or Novation.** The indebtedness secured by the Mortgage is a continuing obligation and nothing contained herein shall be deemed to release, terminate or subordinate any lien, security interest or assignment created or evidenced by the Mortgage and all such liens, security interest and assignments and the priority thereof shall relate back to the date that the Mortgage was recorded as referenced in the above recitals. Borrower and Lender intend that this Agreement shall in no way affect the priority of the Mortgage or constitute a novation of the indebtedness secured thereby.

7. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) There is currently no Event of Default under the Loan Agreement, the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(b) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(c) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

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(d) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower by its authorized officer.

8. **Costs and Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay to Lender all out-of-pocket costs and expenses incurred by Lender in connection with the preparation, execution, filing and recordation of this Agreement, including, without being limited to, reasonable attorneys' fees, filing and recording fees and appraisal fees.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

10. **Entire Agreement.** Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

11. **Borrower Not a Joint Venturer or Partner.** Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

12. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, substitutes and assigns.

13. **Headings and Gender.** Any references to the "Loan Agreement", the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Amended and Restated Note, the Mortgage, the Loan Agreement and the other Loan Documents, as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

14. **Construction of Agreement; Authority to Execute.** This Agreement has been negotiated by the parties and their respective attorneys. The language in this Agreement shall not be construed for or against either party based on any rule of construction favoring the non-drafting party, but shall be interpreted liberally to effect the intent of the parties. Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the

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adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it.

15. **Counterparts**. This Agreement may be executed in any number of original counterparts, which when so executed shall be deemed to be an original for all purposes, and all counterparts shall together constitute one and same instrument; signature and acknowledgment pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same documents. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

LENDER:

PARK NATIONAL BANK, N.A., a national banking association

By: [Signature]
Name: Ramat Moreland
Title: Officer

BORROWER:

ELMHURST AND DEMPSTER LLC, an Illinois limited liability company

By: [Signature]
Name: Mary DeBenedictis
Title: Manager

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STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I **Christopher M. Kern**, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Ramal Moreland**, **Officer** of **PARK NATIONAL BANK**, a national banking association, 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 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 26th day of November, 2008.





Christopher M. Kern

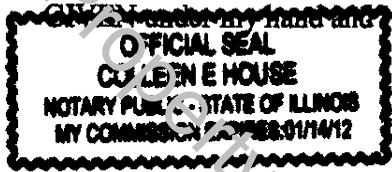
My Commission Expires: September 2, 2009.

Of Cook County Clerk's Office

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STATE OF IL)
) .ss
COUNTY OF COOK)

I Colleen House, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Mary DeBenedichis, Manager of **ELMHURST AND DEMPSTER LLC**, an Illinois limited liability company, 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 said instrument as his own free and voluntary act for the uses and purposes therein set forth.



Notarial Seal this 26th day of November, 2008.

Colleen E. House
Notary Public

My Commission Expires: _____

CLERK'S OFFICE OF COOK COUNTY CLERK'S OFFICE

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EXHIBIT A

THE PROPERTY

Lots 3 and 4 in Vanderear Subdivision, being a subdivision of part of the west half of the northwest quarter of Section 24, Township 41 North, Range 11, East of the Third Principal Meridian in Cook County, Illinois.

PINs: 08-24-100-003-0000
08-24-100-005-0000

Address: 851 South Elmhurst Road
Des Plaines, Illinois

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