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Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/04/2009 03:50 PM Pg: 1 of 7

**THE DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:**

Robert W. Glantz  
Shaw Gussis Fishman Glantz  
Wolfson & Towbin LLC  
321 North Clark Street  
Suite 800  
Chicago, IL 60654

**FIFTH MODIFICATION OF MORTGAGE  
AND OTHER SECURITY DOCUMENTS**

**THIS FIFTH MODIFICATION OF MORTGAGE AND OTHER SECURITY DOCUMENTS** ("Modifications") is made as of December 10, 2008 by **TIMBERS GLEN LLC**, an Illinois limited liability company ("Mortgagor"), with a mailing address of 1440 Lee Street, Des Plaines, Illinois 60018, to and for the benefit of **MB FINANCIAL BANK, N.A.** ("Lender"), with a mailing address of 6111 North River Road, Rosemont, Illinois 60018 Attention: Vincent G. Laughlin.

**RECITALS:**

**WHEREAS**, Pursuant to the terms of that certain Construction Loan Agreement dated June 10, 2005 (the "Loan Agreement") by and between Mortgagor and Lender, Lender has heretofore made a construction mortgage loan (the "Loan") to Mortgagor in the original principal amount of **Four Million Eight Hundred Seventy Five Thousand and 00/100 Dollars (\$4,875,000.00)**; and

**WHEREAS**, the Loan is evidenced in part by an Acquisition and Development Mortgage Note dated as of June 10, 2005, wherein Mortgagor promises to pay to the order of Lender the maximum principal amount of **Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00)** (the "A&D" Note"), and in part by a Revolving Construction Mortgage Note dated as of June 10, 2005, wherein Mortgagor promises to pay to the order of Lender the maximum principal amount of **Two Million Three Hundred Seventy Five Thousand and 00/100 Dollars (\$2,375,000.00)** (the "Construction Note", together with the A&D Note and the LC Note (as hereinafter defined) hereinafter collectively referred to as the "Notes") all as more specifically set forth in said Notes; and

Borrower also executed and delivered to Lender the certain Letter of Credit Mortgage Note in the original principal amount of **Six Hundred Forty Five Thousand and 41/100 Dollars (\$645,000.41)** (the "LC Note") pursuant to the Loan Agreement. In connection with the LC Note, Borrower applied for and Lender issued to the Village of Glenview that certain Irrevocable Letter of Credit No. X-1849 in the original face amount of \$645,000.41 (the "Letter of Credit"), which as been reduced to a current balance as of the date of this Agreement to an amount of **Forty Five Thousand and 41/100 Dollars (\$45,000.41)**; and

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**WHEREAS**, the Notes and the LC Note are secured by, among other things, a Construction Mortgage, Assignment of Leases and Rents, and Security Agreement dated as of the 3<sup>rd</sup> day of June, 2005 by Mortgagor in favor of Lender recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on June 10, 2005, as Document No. 05161331274, as modified by that certain Modification of Mortgage and Other Security Documents dated September 2, 2005, and recorded in the Office of Recorder of Deeds of Cook County, Illinois, on September 20, 2005, as Document No. 0526345137, as further modified by that certain (Second) Modification of Mortgage and Other Security Documents dated November 29, 2005, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on December 14, 2005, as Document No. 0534827115, as further modified by that certain Third Modification of Mortgage and Other Security Documents dated December 10, 2007, and recorded in the office of the Office of Recorder of Deeds of Cook County, Illinois on March 10, 2008, as Document No. 0807033059, and as further modified by that certain Fourth Modification of Mortgage and Other Security Documents dated June 10, 2008, and recorded in the office of the Office of Recorder of Deeds of Cook County, Illinois on August 13, 2008, as Document No. 0822626035 (collectively the "Mortgage"), and a Guaranty of Payment dated as of the 10<sup>th</sup> day of June, 2005, by Louis J. Elliot individually and The Elliot Group, Inc., an Illinois corporation (each of "Guarantor" and collectively "Guarantors") in favor of Lender, as modified by that certain Consent and Reaffirmation of Guarantors and Modification of Guaranty of Payment dated as of the 29<sup>th</sup> day of November, 2005, as further modified by that certain Second Consent and Reaffirmation of Guarantor and Modification of Guaranty of Payment dated as of the 10<sup>th</sup> day of December, 2007, and as further modified by that certain Third Consent and Reaffirmation of Guarantor and Modification of Guaranty of Payment dated as of the 10<sup>th</sup> day of June, 2008 (collectively the "Guaranty"); and all other instruments and documents executed by or on behalf of Mortgagor and delivered to Lender in connection with the Loan, which are hereinafter collectively referred to as the "Other Security Documents"; and

**WHEREAS**, Mortgagor desires that Lender extend the Maturity Date (as defined therein) of the Notes; and

**WHEREAS**, the parties desire to modify and amend the Loan as provided herein and as a condition to such modification, Lender is requiring: (i) this Modification; (ii) an Amendment to Acquisition and Development Mortgage Note whereby the A&D Note is modified to extend the Maturity Date thereof and in other respects (the "A&D Note Amendment"); (iii) an Amendment to Revolving Construction Mortgage Note whereby the Construction Note is modified to extend the Maturity Date thereof and in other respects (the "Construction Note Amendment"); (iv) an Amendment to Letter of Credit Mortgage Note whereby the LC Note is modified to extend the Maturity Date thereof and in other respects (the "LC Note Amendment"; the A&D Note Amendment the Construction Note Amendment and the LC Note Amendment collectively referred to as the "Note Amendments"); and (v) a Fourth Consent and Reaffirmation of Guarantor and Modification of Guaranty of Payment executed by the surviving Guarantor ("Guaranty Modification") whereby the Guaranty is modified to secure the Notes as modified by the Note Amendments and in other respects.

**NOW THEREFORE**, for and in consideration of Ten and 00/100 Dollars (\$10.00) in hand paid, the mutual covenants and conditions herein contained, and other good and valuable

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consideration, the receipt and sufficiency of which are hereby acknowledged, the parties here to do hereby agree as follows:

1. **Incorporation of Recitals.** The aforesaid recitals are hereby incorporated into this Modification by reference as if fully set forth in this Paragraph 1. Wherever the terms and conditions of this Modification conflict with the terms and conditions of the Mortgage, the terms and conditions of this Modification shall control. In all other respects the parties do hereby ratify and declare to be in full force and effect the terms and conditions of the Mortgage and the Other Security Documents.

2. **Modification of Mortgage and Other Security Documents.**

A. The Mortgage is hereby modified by deleting therefrom the following:

*“December 10, 2008, provide that Mortgagor shall have the right to extend the Maturity Date to **June 10, 2009** upon satisfaction of the terms and conditions of Section 4.4 of the Loan Agreement (as defined below).”*

and substituting therefor the following:

*“The entire Indebtedness shall be due and payable **December 10, 2009** (“Maturity Date”); provided, however, that if prior to December 10, 2009 Borrower has not committed a monetary default under the Notes that is not cured within ten (10) days of written notice to Borrower (unless such monetary default has occurred on three prior occasions, in which case there shall be no cure period), then the Maturity Date shall be extended until **December 10, 2010**, without further action of the parties.”*

B. The Loan Agreement is hereby modified to provide that:

(i) As of the date hereof, and in addition to the limitations set forth in section 5.1(t) of the Loan Agreement, in no event shall Lender be required to make any disbursements from the Revolving Construction Mortgage Note for construction of the seventh (7<sup>th</sup>) Building;

(ii) The second sentence of Section 4.3 is deleted and replaced with the following: “Provided Borrower is not then in Default, nor has there occurred a fact or circumstance which, with the giving of notice or passage of time would constitute a Default, each Home will be released from the lien of the Mortgage upon the sale of such Home to a third party and upon payment to Lender

(i) against the outstanding balance of the Acquisition and Development Mortgage Note of a release price of One Hundred Seven Thousand Four Hundred and One and no/100 Dollars (\$107,401) per Home until paid in full; and (ii) against the outstanding balance of the Revolving Construction Mortgage Note of a release price per Home equal to one hundred percent (100%) of the amount disbursed from the Revolving Construction Mortgage Note for construction of the Home

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then being sold, plus all interest accrued on the Revolving Construction Mortgage Note to the date of such payment.”;

(iii) Section 7.5 is amended to provide that, in no event shall the aggregate Advances to be made by Lender under the Revolving Construction Mortgage Note exceed One Million Six Hundred Sixty-three Thousand Seven Hundred Sixty-four and no/100 Dollars (\$1,663,764) and no Advances shall be made under the Revolving Construction Mortgage Note other than for the cost of buyer-specific finishes on three of the remaining spec homes known as lot numbers 2, 3 and 16;

(iv) In no event shall the aggregate Advances to be made by Lender under the Acquisition and Development Mortgage Note exceed Two Hundred Fourteen Thousand Eight Hundred Two and no/100 Dollars (\$214,802) and no Advances shall be made under the Acquisition and Development Mortgage Note other than for the payment of interest under the Loans; and

(v) Notwithstanding anything contained to the contrary in the Loan Agreement or any of the other Loan Documents (as defined in the Loan Agreement), the interest rate being charged under the Loans shall never be less than five and one-half percent (5.5%).

3. **References to Loan Documents and Guaranty.** Any and all references in the Notes, the Mortgage and the Other Security Documents to the “Loan Documents” shall from and after the date hereof be deemed to refer to such Loan Documents as modified by this Modification.

4. **Reaffirmation of Representations and Warranties.** Mortgagor hereby reaffirms as true and correct in all respects, as of the date hereof, any and all representations and warranties contained in the Mortgage and the Other Security Documents.

5. **Reaffirmation of Covenants.** Mortgagor does hereby reaffirm and agree to perform all of the terms, covenants, conditions and obligations applicable to such parties as set forth in the Mortgage and the Other Security Documents as herein modified.

6. **Laws of Illinois.** This Modification shall be covered and construed under the laws of the State of Illinois.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

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**IN WITNESS WHEREOF**, the parties have caused this Modification to be executed pursuant to authority duly granted as of the date and year first written above.

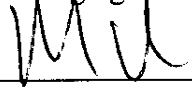
**TIMBERS GLEN LLC**, an Illinois limited liability company

By: **Beaver Creek Management, LLC**, an Illinois limited liability company

Its: Manager

By: **The Elliot Group, Inc.**, an Illinois corporation

Its: Managing Member

By:  PRESIDENT

Name: MARK ELLIOTT

Its: President

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## EXHIBIT "A"

### LEGAL DESCRIPTION

THAT PART OF LOT 4 IN COUNTY CLERKS DIVISION OF THE WEST ½ OF SECTION 29, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE NORTH LINE OF LAKE STREET AND LYING EAST OF THE EAST LINE OF TOLLWAY, IN COOK COUNTY, ILLINOIS.

P.I.N.: 04-29-100-169-0000

STREET ADDRESS: 4450 WEST LAKE AVENUE, GLENVIEW, ILLINOIS

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