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This Instrument Was Prepared By  
And After Recording Please Return To:

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Chicago, Illinois 60603



Doc#: 0911733006 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 04/27/2009 08:24 AM Pg: 1 of 10

## FIRST AMENDMENT TO LOAN DOCUMENTS

**THIS FIRST AMENDMENT TO LOAN DOCUMENTS** (this "Amendment") dated as of April 13, 2009, by and between **DAVID SCOTT MELROSE LLC**, an Illinois limited liability company ("**Borrower**"), and **JPMORGAN CHASE BANK, N.A.**, a national banking association, its successors and its assigns ("**Lender**").

### WITNESSETH:

**WHEREAS**, Borrower has executed and delivered to Lender a Promissory Note dated as of March 30, 2007, payable to Lender in the original maximum stated principal amount of Nine Million Nine Hundred Fifty Thousand and No/100 Dollars (\$9,950,000.00)(as modified by that certain First Amendment to Promissory Note dated as of March 30, 2009, by and between Borrower and Lender, and any and all additional extensions and renewals thereof and substitutions or replacements therefor, sometimes hereinafter collectively referred to herein as the "**Original Note**"), pursuant to which Borrower promises to pay such principal sum thereof (or so much thereof as may be outstanding) at the Maturity Date (as such term is defined in the Original Note), or such earlier date as the Original Note may be accelerated in accordance with the terms of the Original Note, together with interest on the balance of principal from time to time outstanding and unpaid thereon at the rates and at the times specified in the Original Note. The outstanding principal balance of the Original Note as of the date hereof is Eight Million Four Hundred Fifteen Thousand Three Hundred Forty and 50/100 Dollars (\$8,415,340.50).

**WHEREAS**, pursuant to the terms of the Construction Loan Agreement dated as of March 30, 2007, by and between Borrower and Lender (as it may be modified, amended or restated, the "**Loan Agreement**"), Lender made the loan described in the Original Note (the "**Loan**"), and Borrower's obligations thereunder are secured and/or evidenced by, among other things, (a) that certain Construction Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated as of March 30, 2007, from Borrower in favor of Lender, and recorded on April 3, 2007, in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 0709335359 (as it may be modified, amended or restated, the "**Mortgage**"), encumbering the real property described on **Exhibit A** attached hereto, and (b)

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certain other loan documents related thereto (as they may be modified, amended or restated, the "Ancillary Loan Documents"; the Loan Agreement, the Mortgage and the Ancillary Loan Documents, as such documents may be modified, amended or replaced from time to time, the "Loan Documents").

**WHEREAS**, Borrower has requested that Lender, among other things, (a) extend the Maturity Date of the Original Note from April 13, 2009, to April 13, 2010, with an option to extend such Maturity Date to April 13, 2011, (b) modify the interest rate due and payable under the Original Note, and (c) reduce the maximum aggregate amount of disbursements allowed under the Loan Documents.

**WHEREAS**, Lender has agreed to consent to Borrower's execution of an Amended and Restated Promissory Note of even date herewith in favor of Lender in the maximum principal amount of Nine Million Nine Hundred Fifty Thousand and No/100 Dollars (\$9,950,000.00)(and any and all extensions and renewals thereof and substitutions or replacements therefor, sometimes hereinafter collectively referred to herein as the "Note") to reflect the aforesaid extension of the Maturity Date and the aforesaid modification of the interest rate, provided, among other things, that Borrower executes this Amendment whereby the Loan Documents are modified to reflect, among other things, that the Maturity Date is so extended, and that future draws are limited under the Loan Documents, all in accordance with the terms of the Note described above.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises of the parties, and for other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. The foregoing recitals are hereby incorporated by this reference into this Amendment.
2. Borrower and Lender agree that the Note has been amended and restated to provide that the Maturity Date has been extended from April 13, 2009, to April 13, 2010. To reflect such extension, Borrower and Lender agree that the Loan Documents are hereby modified to reflect that the Maturity Date has been extended to April 13, 2010.
3. Borrower and Lender agree that, notwithstanding anything to the contrary contained in the Loan Documents, from and after the date hereof, and following the principal repayment required in **Section 4(b)** hereof, Borrower's rights to requests and/or obtain additional disbursements of funds under the Note and the other Loan Documents shall be limited such that Lender shall not be obligated to disburse funds which would increase the maximum outstanding principal amount outstanding under the Loan to an amount in excess of Six Million Nine Hundred Eighty-Two Thousand Five Hundred and No/100 Dollars (\$6,982,500.00) (i.e. such further disbursements shall in no event exceed, in the aggregate, One Million Five Hundred Thirty-Four Thousand Six Hundred Fifty-Nine and 50/100 Dollars (\$1,534,659.50). To reflect such modifications, Borrower and Lender agree that any and all provisions contained

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in the Loan Documents granting Borrower the right to request additional draws under the Loan are hereby modified to reflect such limitations.

4. Borrower and Lender agree that Borrower, concurrent with its execution of this Amendment, shall pay to Lender:

- (a) all accrued and unpaid interest under the Note and all amounts, other than interest and principal, due and payable by Borrower under the Loan Documents as of the date hereof;
- (b) a partial principal payment in the amount of Two Million Nine Hundred Sixty-Seven Thousand Five Hundred and No/100 Dollars (\$2,967,500.00);
- (c) a loan modification fee in the amount of Eight Thousand Seven Hundred Twenty-Eight and 13/100 Dollars (\$8,728.13)(the "Loan Modification Fee"), such Loan Modification Fee to be deemed fully earned and non-refundable;
- (d) a loan processing fee in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00)(the "Loan Processing Fee"), such Loan Processing Fee to be deemed fully earned and non-refundable; and
- (e) all the internal and external costs and expenses incurred by Lender in connection with this Amendment (including, without limitation, inside and outside attorneys, appraisal, appraisal review, closing, processing, title, filing, and recording costs, expenses, and fees).

5. The Loan Documents are ratified and affirmed by Borrower and shall remain in full force and effect as modified herein. Any property or rights to or interests in property granted as security in the Loan Documents shall remain as security for the Loan and the obligations of Borrower in the Loan Documents.

6. Borrower represents and warrants to Lender that to Borrower's actual knowledge:

- (a) no Event of Default (as defined in the Loan Agreement) under any of the Loan Documents as modified herein, nor any event, that, with the giving of notice or the passage of time or both, would be an Event of Default under any of the Loan Documents as modified herein has occurred and is continuing;
- (b) there has been no material adverse change in the financial condition or results from operations of Borrower or any other person whose financial statement has been delivered to Lender in connection with the Loan from the most recent financial statement received by Lender, and there has been no casualty, loss or material deterioration in the physical condition of any collateral security for the Loan;

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- (c) each of the representations and warranties of Borrower in the Loan Documents is true and accurate in all material respects as if made on the date hereof other than those relating to the value of the collateral;
- (d) Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein;
- (e) the Loan Documents as modified herein are the legal, valid, and binding obligation of Borrower, enforceable against Borrower in accordance with their terms; and
- (f) Borrower is validly existing under the laws of the State of Illinois, and has the requisite power and authority to execute and deliver this Amendment and to perform the Loan Documents as modified herein. The execution and delivery of this Amendment 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 Amendment has been duly executed and delivered on behalf of Borrower.

7. Borrower covenants and agrees with Lender that:

- (a) Borrower shall execute, deliver, and provide to Lender, and shall cause to be executed, delivered and provided to Lender, such additional agreements, documents, instruments, and resolutions as are reasonably required at any time by Lender;
- (b) Borrower fully, finally, and forever releases and discharges Lender and its successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits, of whatever kind or nature, in law or equity of Borrower, whether now known or unknown to Borrower, (i) in respect of the Loan, the Loan Documents, or the actions or omissions of Lender in respect of the Loan or the Loan Documents and (ii) arising from events occurring prior to or contemporaneously with the date of this Amendment;
- (c) contemporaneously with the execution and delivery of this Amendment, (i) Borrower shall execute and deliver to Lender the Note, (ii) Borrower shall cause to be executed and delivered to Lender that certain Second Reaffirmation of Guaranty Agreement dated of even date herewith from Harlan Korman and Patrick Lederer (collectively, "**Guarantors**") in favor of Lender, (the "**Reaffirmation**"), (iii) Borrower shall cause to be executed and delivered to Lender an estoppel from Principal Life Insurance Company ("**Principal**") in favor of Lender (the "**Estoppel**"), related to the Tri-Party Agreement dated as of March 30, 2007, among Borrower, Lender and Principal, and (iv) Borrower shall cause to be

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executed and delivered to Lender a subordination from Principal in favor of Lender (the "Subordination").

8. Borrower represents and warrants to Lender that Lender shall not be bound by this Amendment until (a) Lender has executed and delivered this Amendment, (b) Borrower has performed all of the obligations of Borrower under this Amendment to be performed contemporaneously with the execution and delivery of this Amendment, (c) Guarantors have executed and delivered to Lender the Reaffirmation, and (d) Principal has executed and delivered to Lender the Estoppel and the Subordination.

9. Nothing herein contained shall impair the Loan Documents in any way, nor alter, waive, annul, vary nor affect any provision, condition or covenant therein contained except as expressly herein provided nor affect or impair any right, power or remedy of Lender, it being the intention of the parties hereto that the terms and provisions of the Loan Documents shall continue in full force and effect except as expressly modified in connection herewith. No provision of the Loan Documents as modified herein may be changed, discharged, supplemented, terminated, or waived except in a writing signed by the parties thereto.

10. This Amendment shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

11. No extension, change, modification or amendment of any kind or nature whatsoever, to or of this Amendment shall be made or claimed by Borrower, and no notice of any extension, change, modification or amendment, made or claimed by Borrower shall have any force or effect whatsoever unless the same shall be reduced to writing and signed by the parties.

12. This Amendment shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to conflicts of law principles.

13. This Amendment may be executed in one or more counterpart signature pages, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

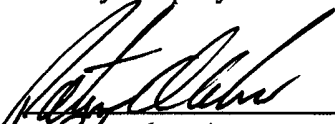
**(Signature page follows.)**

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IN WITNESS WHEREOF, the undersigned have caused these presents to be signed as of the day and year first above written.

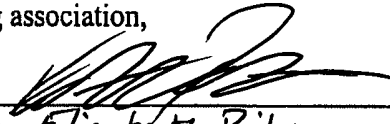
**BORROWER:**

**DAVID SCOTT MELROSE, LLC**, an Illinois limited liability company

By:   
Name: Patrick LeDuc  
Its: Managing Member

**LENDER:**

**JPMORGAN CHASE BANK, NA**, a national banking association,

By:   
Name: Elizabeth Ritenour  
Title: Vice President

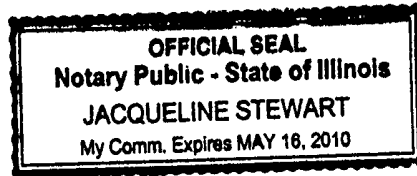
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STATE OF IL )  
 ) SS.  
COUNTY OF COOK )

Before me, a Notary Public in and for said state, personally appeared Patrick Lodeee, the Managing member of **DAVID SCOTT MELROSE LLC**, an Illinois limited liability company, who acknowledges that he did sign the foregoing instrument and that the same is his free act and deed as of the 13<sup>th</sup> day of April, 2009.

Jacqueline Stewart  
Notary Public



Property of Cook County Clerk's Office

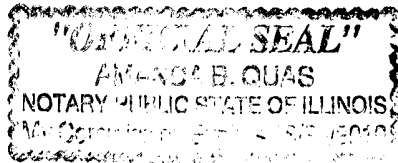


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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I Amanda B. Quas, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ~~Elizabeth A. R. [unclear]~~ personally known to me as the Vice President of JPMorgan Chase Bank, N.A., a national banking association, and 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 as officer such of said entity, s/he signed and delivered the said instrument, and caused the seal of said entity to be affixed thereto, pursuant to authority given, as his/her free and voluntary act and as the free and voluntary act of said entity for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal as of the 13<sup>th</sup> day of April, 2009.



Amanda B. Quas  
Notary Public  
My commission expires: \_\_\_\_\_



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## EXHIBIT A Legal Description

### PARCEL 1:

THE SOUTH 319.80 FEET OF THE EAST 742.11 FEET (EXCEPT THE NORTH 10.80 FEET OF THE EAST 123.33 FEET OF SAID SOUTH 319.80 FEET THEREOF) OF LOT 1 IN OWNER'S DIVISION OF THE EAST 70 ACRES (EXCEPT THE NORTH 15 ACRES THEREOF AND EXCEPT THE EAST 33.0 FEET THEREOF TAKEN FOR STREET) OF THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, SOUTH OF THE INDIAN BOUNDARY LINE AND OF THAT PART OF THE NORTHEAST 1/4 OF SAID SECTION 4, LYING WEST OF THE ABOVE-DESCRIBED PROPERTY AND LYING EAST OF THE WEST 80 ACRES OF SAID 1/4 SECTION, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

THAT PART OF LOT 1 IN OWNER'S DIVISION OF THE EAST 70.0 ACRES (EXCEPT THE NORTH 15 ACRES THEREOF AND EXCEPT THE EAST 33 FEET THEREOF TAKEN FOR STREET) OF THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, SOUTH OF THE INDIAN BOUNDARY LINE AND OF THAT PART OF THE NORTHEAST 1/4 OF SAID SECTION 4 LYING EAST OF THE WEST 80 ACRES OF SAID 1/4 SECTION, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE EAST LINE OF SAID LOT 1, 309.0 FEET NORTH OF THE SOUTHEAST CORNER THEREOF; THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID LOT 1, 123.33 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID LOT 1, 10.80 FEET; THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID LOT 1, 618.78 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID LOT 1, 25.0 FEET; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 1, 347.43 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID LOT 1, 12.20 FEET; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 1, 271.35 FEET; THENCE SOUTHEASTERLY ALONG A CURVED LINE CONVEX TO THE SOUTHWEST AND HAVING A RADIUS OF 5.0 FEET, 7.81 FEET; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 1, 118.33 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1, 43.0 FEET NORTH OF THE PLACE OF BEGINNING; THENCE SOUTH ALONG THE EAST LINE OF SAID LOT 1, 43.0 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

### PARCEL 3:

A 47 FOOT SQUARE, THE CENTER OF WHICH IS 386.80 FEET NORTH OF THE SOUTH LINE OF LOT 1 AND 424.68 FEET WEST OF THE EAST LINE OF LOT 1, WHICH IS PRESENTLY IDENTICAL WITH THE CENTER OF THE EXISTING ELEVATED WATER TOWER. ALSO, THE 10 FEET OVER THE EXISTING BURIED UTILITIES DESCRIBED AS LYING 5.0 FEET ON EITHER SIDE OF A LINE DESCRIBED AS BEGINNING AT THE CENTER OF THE EXISTING ELEVATED WATER TOWER, AS HERETOFORE

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DESCRIBED AND RUNNING THENCE SOUTH TO THE NORTH LINE OF THE SOUTH  
319.80 FEET OF LOT 1, AFORESAID, IN COOK COUNTY, ILLINOIS.

Common Address: 1502 North 25th Avenue, Melrose Park, Illinois

PIN: 15-04-209-005-0000  
15-04-209-008-0000

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