

UNOFFICIAL COPY



THIS DOCUMENT WAS PREPARED BY,
AND AFTER RECORDING, RETURN TO:

Doc#: 0914118041 Fee: \$56.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/21/2009 03:17 PM Pg: 1 of 11

Michael D. Burstein, Esq.
MUCH SHELIST
191 North Wacker Drive
Suite 1800
Chicago, Illinois 60606.1615

PERMANENT TAX INDEX NUMBER:

10-35-204-021-0000

PROPERTY ADDRESS:

Vacant lot located on Central Park Avenue
Lincolnwood, Illinois

SECOND MODIFICATION OF LOAN DOCUMENTS

This **SECOND MODIFICATION OF LOAN DOCUMENTS** (this "**Agreement**") is made as of the 31st day of March, 2009, by and among (i) **DORA, LLC**, an Illinois limited liability company (the "**Borrower**"), (ii) **ROGER A. D'GRAZIO, JR.**, and **COLLISION REVISION, INC.**, a Delaware corporation (each, a "**Guarantor**", and collectively, the "**Guarantors**"), and (iii) **BANK OF AMERICA, N.A.**, a national banking association, as successor by merger to LaSalle Bank National Association, a national banking association (the "**Lender**").

RECITALS:

A. The Lender previously made a loan ("**Loan**") to the Borrower in the principal amount of **ONE MILLION AND NO/100 DOLLARS** (\$1,000,000.00), as evidenced by a Promissory Note dated May 20, 2008, in the principal amount of the Loan made payable by the Borrower to the order of the Lender (the "**Note**"; all terms not otherwise defined in this Agreement shall have the meanings set forth in the Note).

B. The Note is secured by, among other things, (i) that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated May 20, 2008, from the Borrower to the Lender recorded with the Recorder's Office of Cook County, Illinois (the "**Recorder's Office**"), on August 22, 2008, as Document No. 0823504142 (the "**Mortgage**"), which Mortgage encumbers the real property and all improvements thereon legally described on **Exhibit "A"** hereto (the "**Property**"); (ii) that certain Assignment of Rents and Leases dated May 20, 2008, from the Borrower to the Lender and recorded in the Recorder's Office of August 22, 2008, as Document No. 0823504143 (the "**Assignment of Leases**"); (iii) that certain

RM

UNOFFICIAL COPY

Environmental Indemnity Agreement dated May 20, 2008, from the Borrower and the Guarantors to the Lender (the "**Indemnity Agreement**"); (iv) that certain Modification of Loan Documents dated as of November 20, 2008, executed by and among the Borrower, the Lender and the Guarantors and recorded with the Recorder's Office on March 24, 2009, as Document No. 0908318060; and (v) certain other loan documents.

C. The Loan is further secured by a Guaranty of Payment dated May 20, 2008, from the Guarantors to the Lender (the "**Guaranty**"; the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the Guaranty and the other documents evidencing, securing and guarantying the Loan, in their original form and as amended from time to time, are sometimes collectively referred to in this Agreement as the "**Loan Documents**").

D. The Borrower desires to amend the Loan Documents in order to extend the maturity date of the Note to May 31, 2009.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth above (which are incorporated into and made a part of this Agreement), (ii) the agreements by the Lender to modify the Loan Documents, as provided in this Agreement, (iii) the covenants and agreements contained in this Agreement, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged, the parties agree as follows:

1. **Maturity Date.** The Maturity Date of the Note is extended to May 31, 2009. Any reference in the Note, the Mortgage or any other Loan Document to the Maturity Date shall mean May 31, 2009.

2. **Notices.** Section 25 of the Mortgage is hereby amended to provide that all notices to the Lender shall be addressed as follows:

BANK OF AMERICA, N.A.
1 Federal Street
Boston, MA 02110
Mailstop: MA5-503-05-05
Attention: Scott W. Vokey, Senior Vice President

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

(a) The representations and warranties in the Mortgage and the other Loan Documents are true and correct as of this date.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and the 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.

UNOFFICIAL COPY

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of the Borrower, either 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.

(e) As of this date, the Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified in this Agreement.

(f) The Borrower validly exists 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 in this Agreement. The execution and delivery of this Agreement and the performance of the Loan Documents as modified in this Agreement have been duly authorized by all requisite action by or on behalf of the Borrower. This Agreement has been duly executed and delivered on behalf of the Borrower.

4. **Reaffirmation of Guaranty.** Each Guarantor 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 representations and warranties of each Guarantor in the Guaranty are, as of this date, true and correct and neither Guarantor knows of any default thereunder. The Guaranty continues to be the valid and binding obligation of each Guarantor, enforceable in accordance with its terms and neither Guarantor has any claims or defenses to the enforcement of the rights and remedies of the Lender thereunder, except as provided in the Guaranty.

5. **Expenses.** As a condition precedent to the agreements contained in this Agreement, the Borrower shall pay all out-of-pocket costs and expenses incurred by the Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

6. **Release and Waiver of Claims.** In consideration of the Lender's agreement to enter into this Agreement, the Borrower and the Guarantors agree as follows:

(a) **General Release and Waiver of Claims.** The Borrower and the Guarantors jointly and severally release and forever discharge the Lender and its respective successors, assigns, partners, directors, officers, agents, attorneys, administrators, trustees, subsidiaries, affiliates, beneficiaries, shareholders, representatives, agents, servants and employees from any and all rights, proceedings, agreements, contracts, judgments, debts, costs, expenses, promises, duties, claims, demands, cross-actions, controversies, causes of action, damages, rights, liabilities and obligations, at law or in equity whatsoever, known or unknown, suspected or unsuspected, choate or inchoate, whether past, present or future, now held, owned or possessed by the Borrower or the Guarantors, or which the Borrower or the Guarantors

UNOFFICIAL COPY

may hereafter hold or claim to hold from the beginning of time to the date of this Agreement under common law or statutory right, known or unknown, arising, directly or indirectly, proximately or remotely, out of the Note, the Mortgage or any of the other Loan Documents including, without limitation, any and all rights, proceedings, agreements, contracts, judgments, debts, expenses, promises, duties, claims, demands, cross-actions, controversies, courses of action, damages, rights, liability and obligations whether based upon tort, fraud, breach of any duty of fair dealing, breach of confidence, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any claim for wrongfully accelerating the Note or wrongfully attempting to foreclose on any collateral relating to the Note, contract or usury, but only to the extent that the foregoing arise in connection with events which occurred prior to the date of this Agreement. Without limiting the generality of the foregoing, this release shall include the following matters: (a) all aspects of this Agreement, Note, the Mortgage, the other Loan Documents and the negotiations between or on behalf of the Borrower, the Guarantors and the Lender and the demands and requests by the Lender of the Borrower or the Guarantors concerning this Agreement and the other Loan Documents, including, but not limited to, all meetings, telephone calls, correspondence and/or other contacts among or on behalf of the Borrower, the Guarantors and the Lender incident to the attempts of said parties to reach an agreement in connection herewith, or in connection with Note, the Mortgage or the other Loan Documents and the attempt(s) of the Lender to collect the Note, and (b) the exercise by the Lender of its rights under the Note, the Mortgage or any of the other Loan Documents or at law or in equity.

This release is intended to release all liability of any character claimed for damages, of any type or nature, for injunctive or other relief, for attorneys' fees, interest or any other liability whatsoever, whether statutory, or contractual or tort in character, or of any other nature or character in any way related to any and all matters and dealings of any nature whatsoever asserted or assertable by or on behalf of the Borrower and/or the Guarantors against the Lender, including, without limitation, any loss, cost or damage in connection with, or based upon, any breach of fiduciary duty, breach of any duty of fair dealing or good faith, breach of confidence, breach of funding commitment, breach of any other duty, breach of any statutory right, fraud, usury, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with corporate or other governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any other cause of action, but only to the extent that the foregoing arise in connection with events which occurred prior to the date of execution hereof.

The Borrower and the Guarantors each understand and agree that this is a full, final and complete release and agree that this release may be pleaded as an absolute and final bar to any or all suit or suits pending or which may thereafter be filed or prosecuted by the Borrower or the Guarantors, or anyone claiming by, through or under the Borrower or the Guarantors, in respect of any of the matters released by this Agreement,

UNOFFICIAL COPY

and that no recovery on account of the described matters may hereafter be had from anyone whomsoever, and that the consideration given for this release is no admission of liability and that neither the Borrower, the Guarantors, nor those claiming under any of them will ever claim that it is.

(b) **Releases Binding on Affiliates of the Borrower and the Guarantors.**

The provisions, waivers and releases set forth are binding upon the Borrower, the Guarantors and their respective agents, employees, representatives, officers, directors, general partners, limited partners, joint shareholders, beneficiaries, trustees, administrators, subsidiaries, affiliates, employees, servants and attorneys.

7. **Miscellaneous.**

(a) This Agreement is governed by and should be construed in accordance with the laws of the State of Illinois.

(b) This Agreement may not be construed more strictly against Lender than against the Borrower or the Guarantors merely by virtue of the fact that the same has been prepared by counsel for the Lender, it being recognized that the Borrower, the Guarantors and the Lender have contributed substantially and materially to the preparation of this Agreement, and the Borrower, the Guarantors and the Lender each acknowledges and waives any claim contesting the existence and the 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 to be legally bound by the terms and provisions of this Agreement, of its own free will, without promises or threats or the exertion of duress upon it. The signatories state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by the Lender, nothing contained in this Agreement may be considered to constitute Lender a venturer or partner of or in any way associated with the Borrower or the Guarantors nor will privity of contract be presumed to have been established with any third party.

(d) The Borrower, the Guarantors and the 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 the Borrower, the Guarantors and the Lender; and that all such prior understandings, agreements and representations are modified as set forth in this Agreement. Except as expressly modified, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement binds and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

UNOFFICIAL COPY

(f) Any references to the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents should be considered to refer to the Mortgage and the other Loan Documents as amended. The paragraph and section headings used in this Agreement are for convenience only and shall not limit the substantive provisions hereof. All words in this Agreement that are expressed in the neuter gender should be considered to include the masculine, feminine and neuter genders. Any word in this Agreement that is expressed in the singular or plural should be considered, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, constitute one original Agreement.

(h) Time is of the essence of each of the Borrower's obligations under this Agreement.

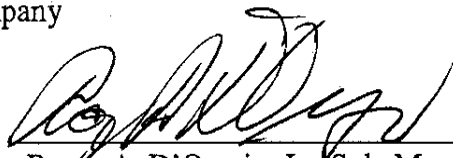
[Remainder of Page Intentionally Left Blank – Signature Page Follows]

UNOFFICIAL COPY

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

BORROWER:

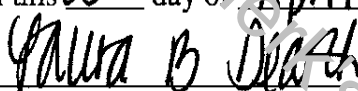
DORA, LLC, an Illinois limited liability company

By: 
Roger A. D'Orazio, Jr., Sole Manager

STATE OF ILLINOIS)
COUNTY OF Grundy) ss

I Laura B Dearth, a Notary Public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that Roger A. D'Orazio, Jr., the Sole Manager of **DORA, LLC**, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Sole Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23rd day of April, 2009.


Notary Public



My Commission Expires:
May 10, 2011

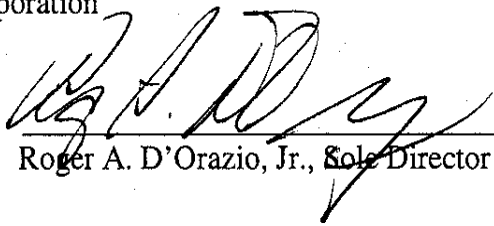
[Signatures Continue on Following Page]

UNOFFICIAL COPY

[Signatures Continued from Preceding Page]

GUARANTOR:

COLLISION REVISION, INC., a Delaware corporation

By: 
Roger A. D'Orazio, Jr., Sole Director

STATE OF ILLINOIS)

COUNTY OF Grundy) ss

I Laura B Dearth, a Notary Public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that that Roger A. D'Orazio, Jr., the Sole Director of **COLLISION REVISION, INC.**, a Delaware corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Sole Director, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23rd day of April, 2009.

Laura B Dearth
Notary Public



My Commission Expires:

May 10, 2011

[Signatures Continue on Following Page]

UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

THE NORTH 205.00 FEET OF THE WEST 435.00 FEET (AS MEASURED PERPENDICULAR TO THE WEST LINE) OF LOT 3B AND LOT 3C IN LINCOLNWOOD TOWN CENTER RESUBDIVISION, BEING A RESUBDIVISION OF LINCOLNWOOD TOWN CENTER SUBDIVISION (EXCEPTING THEREFROM LOT 9), A PART OF THE NORTH 1/2 OF SECTION 35, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS RECORDED MAY 26, 1989 AS DOCUMENT 89242443, AND ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 2, 1989 AS DOCUMENT 89521374, IN COOK COUNTY, ILLINOIS, EXCEPT THAT PART, DESCRIBED AS FOLLOWS:

BEGINNING AT SOUTHWEST CORNER OF LOT 3B AFORESAID; THENCE ON AN ASSUMED BEARING OF NORTH 00 DEGREE, 57 MINUTES, 47 SECONDS EAST ALONG THE WEST LINE OF SAID LOTS 3B AND 3C, A DISTANCE OF 629.11 FEET TO THE NORTHWEST CORNER OF LOT 3C; THENCE SOUTH 88 DEGREES, 46 MINUTES, 24 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 3C, A DISTANCE OF 10.00 FEET; THENCE SOUTH 00 DEGREE, 57 MINUTES, 47 SECONDS WEST, A DISTANCE OF 239.83 FEET; THENCE SOUTHEASTERLY ALONG A TANGENTIAL CURVE CONCAVE TO THE NORTHEAST RADIUS 370.90 FEET, CENTRAL ANGLE OF 91 DEGREES, 34 MINUTES, 43 SECONDS, AN ARC DISTANCE OF 511.47 FEET TO A LINE 60.00 FEET NORTH OF (PERPENDICULAR MEASURE) AND PARALLEL WITH THE SOUTH LINE OF LOT 3B; THENCE NORTH 89 DEGREES, 23 MINUTES, 04 SECONDS EAST ALONG TANGENT 96.22 FEET TO THE EAST LINE OF THE WEST 435.00 FEET OF LOTS 3B AND 3C (AS MEASURED PERPENDICULAR TO THE WEST LINE THEREOF); THENCE SOUTH 00 DEGREE, 57 MINUTES, 47 SECONDS WEST ALONG SAID EAST LINE OF THE WEST 435.00 FEET, A DISTANCE OF 60.02 FEET TO THE SOUTH LINE OF LOT 3B; THENCE SOUTH 89 DEGREES, 23 MINUTES, 04 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 435.17 FEET TO POINT OF BEGINNING.

PROPERTY ADDRESS OF REAL ESTATE:

Vacant lot located on Central Park Avenue
Lincolnwood, Illinois

PERMANENT TAX INDEX NUMBER:

10-35-204-021-0000