

# UNOFFICIAL COPY

This document was prepared by,  
and after recording, return to:

Drew J. Scott, Esq.  
SCOTT & KRAUS, LLC  
150 South Wacker Drive, Suite 2900  
Chicago, IL 60606

Property Addresses:

4427 Midlothian Turnpike  
Crestwood, Illinois 60445

PIN(s): 28-03-308-045, 046, 050, 051, 052,  
053, 054 and 055



Doc#: 0926731063 Fee: \$54.25  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/24/2009 11:59 AM Pg: 1 of 9

This

nly

## SECOND MODIFICATION TO MORTGAGE, SECURITY AGREEMENT ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING AND ASSIGNMENT OF RENTS AND LEASES

THIS SECOND MODIFICATION TO MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING AND ASSIGNMENT OF RENTS AND LEASES (this "Second Modification") is made and entered into effective as of August 26, 2009, by and among, CRESTWOOD INVESTMENTS I, LLC, an Illinois limited liability company ("Crestwood I"), CRESTWOOD INVESTMENTS II, LLC, an Illinois limited liability company ("Crestwood II" together with Crestwood I are referred to herein, collectively, as the "Mortgagor"), and COLE TAYLOR BANK, an Illinois banking corporation, whose address is 9550 West Higgins Road, Rosemont, Illinois 60018 (the "Mortgagee").

### RECITALS:

A. Mortgagee has made a loan (the "ABCO Loan") to ABCO TRUCK & EQUIPMENT CO., LTD., an Illinois corporation ("ABCO") and AMERICAN BODY COMPANY, an Illinois corporation ("American", together with ABCO are referred to, collectively, as the "ABCO Borrowers"), jointly and severally, arising under and pursuant to that certain Loan and Security Agreement dated as of August 29, 2008, made by and among the ABCO Borrowers and Mortgagee (the "ABCO Loan Agreement"). The ABCO Loan is evidenced by that certain Revolving Note dated as of August 29, 2008, made by ABCO Borrowers in favor of Mortgagee in the maximum principal amount of Four Million and No/100 Dollars (\$4,000,000) (the "Revolving Note").

B. Mortgagee has made a loan (the "Crestwood Loan") to Mortgagor, jointly and severally, evidenced by that certain Promissory Note dated as of August 29, 2008, made by Mortgagor in favor of Mortgagee in the original principal amount of Three Million Two Hundred Fifty Thousand and No/100 Dollars (\$3,250,000) (the "Mortgage Note").

C. Mortgagee has made a loan to R&R ASSOCIATES III LLC, an Illinois limited liability company ("R&R III") in the original principal amount of \$425,000.00 (the "KC Loan"), evidenced and

SV  
MN  
pg  
11

# UNOFFICIAL COPY

secured by, among other things: (i) the Promissory Note dated as of October 31, 2008 (the "KC Note"), in the original principal sum of \$425,000.00 from R&R III to Mortgagee, which KC Loan and KC Note mature September 8, 2013; (ii) the Deed of Trust and Assignment of Rents dated as of October 31, 2008 (the "KC Deed of Trust"), from R&R III to Mortgagee and Chicago Title and Trust Company, as Trustee, for the benefit of Mortgagee, conveying the property commonly known as 6700 St. John Avenue, Kansas City, Missouri (the "KC Premises"); (iii) the Assignment of Rents and Leases dated as of October 31, 2008 (the "KC Assignment of Rents"), from R&R III to Mortgagee; and (iv) the Unconditional Continuing Guaranty dated as of October 31, 2008 (the "KC Guaranty") from the ABCO Borrowers to Mortgagee.

D. The ABCO Loan, the Crestwood Loan and the KC Loan (collectively, the "Loans") are cross-defaulted.

E. The ABCO Loan and Crestwood Loan are cross-collateralized and cross-defaulted, and are secured by, among other things: (i) the ABCO Loan agreement; (ii) the Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of August 29, 2008 (the "Crestwood Mortgage"), executed by Mortgagor in favor of Mortgagee and recorded in the office of the Cook County Recorder of Deeds ("Recorder's Office") on September 11, 2008, as document number 0825505115, and which created a first lien on the real estate commonly known as 4427 Midlothian Turnpike, Crestwood, Illinois (the "Crestwood Premises") legally described in Exhibit A attached hereto; (iii) the Assignment of Rents and Leases dated as of August 29, 2008 (the "Crestwood Assignment of Rents"), executed by Mortgagor in favor of Mortgagee and recorded in the Recorder's Office on September 11, 2008 as document number 0825505116, and which encumbers the Crestwood Premises; (iv) the Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of August 29, 2008 (the "Indian Head Mortgage"), executed by R&R II in favor of Mortgagee and recorded in the Recorder's Office on September 11, 2008, as document number 0825505117, and which created a first lien on the real estate commonly known as 11214 West 70th Place, Indian Head Park, Illinois 60525 (the "Indian Head Premises") legally described on Exhibit B attached hereto; (v) the Assignment of Rents and Leases dated as of August 29, 2008 (the "Indian Head Assignment of Rents"), executed by R&R II in favor of Mortgagee and recorded in the Recorder's Office on September 11, 2008 as document number 0825505118 and which encumbers the Indian Head Premises; (vi) the Unconditional Continuing Guaranty dated as of August 29, 2008 (the "Crestwood Guaranty"), from Mortgagor to Mortgagee; (vii) the Unconditional Continuing Guaranty dated as of August 29, 2008 (the "ABCO Guaranty"), from ABCO Borrowers to Mortgagee; (viii) the Master Letter of Credit Agreement dated as of August 29, 2008 (the "Letter of Credit Agreement") by the ABCO Borrowers in favor of Mortgagee (the ABCO Loan Agreement, the Revolving Note, the Term Note, the Crestwood Mortgage, the Crestwood Assignment of Rents, the Indian Head Mortgage, the Indian Head Assignment of Rents, the Crestwood Guaranty, the ABCO Guaranty, the Letter of Credit Agreement and each and all of the other agreements, documents, instruments and certificates delivered to or for the benefit of Mortgagee from time to time evidencing and/or securing the Loans, and all amendments, restatements supplements, and other modifications thereof or thereto are hereinafter referred to collectively as the "Loan Documents").

F. The Loan Documents have been previously amended by that certain First Modification to Loan Documents dated as of October 31, 2008 (the "First Modification Agreement") and recorded in the office of the Cook County Recorder of Deeds on February 20, 2009, as Document No. 0905145104, and that certain Second Modification to Loan Documents of even date herewith (the "Second Modification Agreement"), each by and among the ABCO Borrowers, Mortgagor, R&R III, R&R Associates II, an Illinois limited liability company ("R&R II") and Mortgagee.

# UNOFFICIAL COPY

G. In connection with the Second Modification Agreement, ABCO Borrowers have executed and delivered to Mortgagee that certain Amended and Restated Revolving Note of even date herewith (the "Amended Revolving Note") in the principal amount of \$4,500,000, and Mortgagor has executed and delivered to Mortgagee that certain Amended and Restated Promissory Note of even dated herewith (the "Amended Mortgage Note") in the principal amount of \$3,101,038.

H. Mortgagor and Mortgagee desire to record this amendment to the Crestwood Mortgage and the Crestwood Assignment of Rents consistent with the Second Modification Agreement.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Mortgagor and Mortgagee hereby agree as follows:

1. AGREEMENTS.

1.1 Defined Terms; Incorporation of the Crestwood Mortgage and Crestwood Assignment of Rents. All capitalized terms which are not defined hereunder shall have the same meanings as set forth in the Crestwood Mortgage, and the Crestwood Mortgage and the Crestwood Assignment of Rents to the extent not inconsistent with this Second Modification are incorporated herein by this reference as though the same were set forth in its entirety. To the extent any terms and provisions of the Crestwood Mortgage or the Crestwood Assignment of Rents are inconsistent with the amendments set forth below, such terms and provisions shall be deemed superseded hereby. The Crestwood Mortgage and Crestwood Assignment of Rents shall remain in full force and effect, as previously amended by the First Modification Agreement and as amended hereby and their provisions shall be binding on the parties hereto.

1.2 Amendment of the Crestwood Mortgage and Assignment of Rents. Mortgagor hereby acknowledges and agrees that the Crestwood Mortgage and the Crestwood Assignment of Rents shall secure all of the indebtedness and obligations arising under the Loan Documents as modified and amended by the First Modification Agreement and the Second Modification Agreement, including, without limitation, the indebtedness evidenced by the Amended Revolving Note and the Amended Mortgage Note. All references in the Crestwood Mortgage and Crestwood Assignment of Rents to "Revolving Note" shall mean the Amended Revolving Note, and all references to the "Mortgage Note" shall mean Amended Mortgage Note, as each may be further amended, restated or replaced from time to time.

1.3 Amendments to the Crestwood Mortgage.

(a) Amendment of Revolving Loan Maturity Date. The defined term "Revolving Loan Maturity Date" in the Crestwood Mortgage is hereby changed from "September 1, 2009" to "September 1, 2010", as such date may be extended by Mortgagee from time to time".

(b) Amendment of Securing Clause. The securing clause of the Crestwood Mortgage, being that paragraph on page 5 of the Crestwood Mortgage which begins with the phrase "FOR THE PURPOSE OF SECURING:" is hereby amended in its entirety and restated as follows:

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges, prepayment premium, if any, exit fee, if any, interest rate swap or

# UNOFFICIAL COPY

hedge expenses (if any), reimbursement obligations, fees and expenses for letters of credit issued by the Lender or any affiliate of Lender for the benefit of the Mortgagor and/or Borrower, if any, and other indebtedness evidenced by or owing under the Note, any of the other Loan Documents, and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the obligations and liabilities of the Mortgagor and/or ABCO Borrowers to the Lender under and pursuant to interest rate, currency or commodity swap agreement, cap agreement or collar agreement, executed by and between the Mortgagor and/or ABCO Borrowers and the Lender or any affiliate of Lender from time to time (collectively, "Interest Rate Agreements"), (iii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Mortgagor or Borrower or any other obligor to or benefiting the Lender which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iv) the reimbursement to the Lender of any and all sums incurred, expended or advanced by the Lender pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, the Loan Agreement, any of the other Loan Documents or any Interest Rate Agreements or any application for letters of credit and master letter of credit agreement, with interest thereon as provided herein or therein, whether now or hereafter existing (collectively, the "Indebtedness").

(c) Amendment of financial Covenant. Section 37 of the Crestwood Mortgage is hereby amended in its entirety and restated as follows:

Mortgagor will not suffer or permit violation of the financial covenant contained in Section 10.2 of the ABCO Loan Agreement, which financial covenant, with its associated defined terms is hereby incorporated herein by reference with the same force and effect as if fully set forth at length herein. In the event the ABCO Loan Agreement is terminated prior to the termination of this Mortgage, such financial covenant and associated defined terms shall nonetheless continue in full force and effect unless and until released by Mortgagee.

2. Effectiveness. The amendments to the Crestwood Mortgage and Crestwood Assignment of Rents contemplated by this Second Modification shall be deemed effective immediately upon the full execution of this Second Modification and without any further action required by the parties hereto. There are no conditions precedent or subsequent to the effectiveness of this Second Modification.

3. Payment of Recording Charges, Interest, Fees and Costs. Mortgagor agrees to pay all costs and fees of the Mortgagee incurred or charged in the preparation and execution of this Second Modification including recording and title charges, if any.

[SIGNATURE PAGE FOLLOWS]

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have executed this Second Modification as of the date first above written.

**CRESTWOOD INVESTMENTS I, LLC**, an Illinois limited liability company

By: R&R Associates I LLC, an Illinois limited liability company, its Member

By: [Signature]  
Name: Robert M. Pape  
Title: Manager

By: [Signature]  
Name: Richard A. Pape  
Title: Manager

**CRESTWOOD INVESTMENTS II, LLC** an Illinois limited liability company

By: R&R Associates II LLC, an Illinois limited liability company, its Member

By: [Signature]  
Name: Robert M. Pape  
Title: Manager

By: [Signature]  
Name: Richard A. Pape  
Title: Manager

BANK:

**COLE TAYLOR BANK**, an Illinois chartered bank

By: [Signature]  
Name: [Signature]  
Its: JVP

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## ACKNOWLEDGEMENT

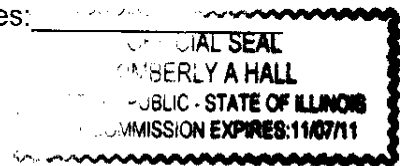
STATE OF Illinois )  
 ) ss.  
COUNTY OF Cook )

On this 26<sup>th</sup> day of ~~October~~ <sup>August</sup>, 2008, before me, a Notary Public in and for said State, personally appeared Richard M. Pape to me personally known, who, being by me duly sworn did say that he is the Manager of R&R Associates I LLC, a member of Crestwood Investments I, LLC, and that said instrument was signed on behalf of said company by authority of its manager and said individual acknowledged said instrument to be the free act and deed of said company, and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Kimberly Hall  
Notary Public

My Commission Expires: \_\_\_\_\_



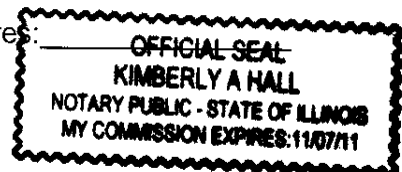
STATE OF Illinois )  
 ) ss.  
COUNTY OF Cook )

On this 26 day of ~~October~~ <sup>August</sup>, 2008, before me, a Notary Public in and for said State, personally appeared Robert A. Pape to me personally known, who, being by me duly sworn did say that he is the Manager of R&R Associates I LLC, a member of Crestwood Investments I, LLC, and that said instrument was signed on behalf of said company by authority of its manager and said individual acknowledged said instrument to be the free act and deed of said company, and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Kimberly Hall  
Notary Public

My Commission Expires: \_\_\_\_\_



# UNOFFICIAL COPY

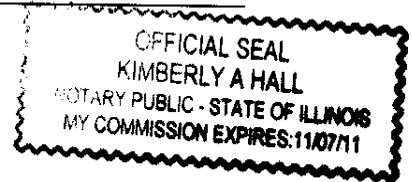
STATE OF Illinois )  
COUNTY OF Cook ) ss.

On this 26 day of ~~October~~ <sup>August</sup>, 2008, before me, a Notary Public in and for said State, personally appeared Richard M. Pape to me personally known, who, being by me duly sworn did say that he is the Manager of R&R Associates II LLC, a member of Crestwood Investments II, LLC, and that said instrument was signed on behalf of said company by authority of its manager and said individual acknowledged said instrument to be the free act and deed of said company, and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Kimberly Hall  
Notary Public

My Commission Expires: \_\_\_\_\_



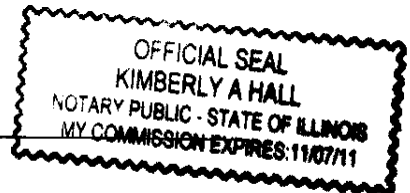
STATE OF Illinois )  
COUNTY OF Cook ) ss.

On this 26 day of ~~October~~ <sup>August</sup>, 2008, before me, a Notary Public in and for said State, personally appeared Robert A. Pape to me personally known, who, being by me duly sworn did say that he is the Manager of R&R Associates II LLC, a member of Crestwood Investments II, LLC, and that said instrument was signed on behalf of said company by authority of its manager and said individual acknowledged said instrument to be the free act and deed of said company, and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Kimberly Hall  
Notary Public

My Commission Expires: \_\_\_\_\_



# UNOFFICIAL COPY

STATE OF Illinois )  
 ) ss.  
COUNTY OF Cook )

On this 26 day of ~~October~~ <sup>August</sup>, 2008, before me, a Notary Public in and for said State, personally appeared Jim Sisk to me personally known, who, being by me duly sworn did say that he is the SVP of Cole Taylor Bank, and that said instrument was signed on behalf of said company by authority of its manager and said individual acknowledged said instrument to be the free act and deed of said company, and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Kimberly Hall  
Notary Public

My Commission Expires: \_\_\_\_\_





# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

Address: 4427 Midlothian Turnpike  
Crestwood, Illinois 60445

PIN Numbers: 28-03-308-045-0000  
28-03-308-046-0000  
28-03-308-050-0000  
28-03-308-051-0000  
28-03-308-052-0000  
28-03-308-053-0000  
28-03-308-054-0000  
28-03-308-055-0000

#### Legal Description:

##### PARCEL 1:

LOT 15 (EXCEPT THE NORTH 17.00 FEET MEASURED AT RIGHT ANGLES TO THE NORTH LINE THEREOF) IN ARTHUR T. MCINTOSH'S BLUE ISLAND FARMS, BEING A SUBDIVISION OF THE EAST 1/4 OF THE SOUTHWEST 1/4 AND THE NORTH 64 RODS OF THE SOUTHEAST 1/4 AND THAT PART OF THE EAST 1/2 OF THE WEST 1/2 OF THE NORTHEAST 1/4, LYING SOUTH OF THE CENTERLINE OF THE MIDLOTHIAN TURNPIKE ALL IN SECTION 3, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THEREFROM THE SOUTH 33.00 FEET OF THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTH WEST 1/4, CONVEYED TO THE MIDLOTHIAN AND BLUE ISLAND RAILROAD), IN COOK COUNTY, ILLINOIS.

##### PARCEL 2:

LOT 3 (EXCEPT THE NORTH 17.00 FEET MEASURED AT RIGHT ANGLES TO THE NORTH LINE THEREOF) AND LOTS 5 AND 6 IN TURNPIKE INDUSTRIAL SUBDIVISION, BEING A RESUBDIVISION OF LOT 13 IN ARTHUR T. MCINTOSH'S BLUE ISLAND FARMS, BEING A SUBDIVISION OF THE EAST 1/4 OF THE SOUTHWEST 1/4 AND THE NORTH 64 RODS OF THE SOUTHEAST 1/4 AND THAT PART OF THE EAST 1/2 OF THE WEST 1/2 OF THE NORTHEAST 1/4, LYING SOUTH OF THE CENTERLINE OF THE MIDLOTHIAN TURNPIKE, ALL IN SECTION 3, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THEREFROM THE SOUTH 33.00 FEET OF THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTHWEST 1/4, CONVEYED TO THE MIDLOTHIAN AND BLUE ISLAND RAILROAD) ALL IN COOK COUNTY, ILLINOIS.

##### PARCEL 3:

LOTS 1 AND 2 (EXCEPT FROM SAID LOTS THE NORTH 17.00 FEET MEASURED AT RIGHT ANGLES TO THE NORTH LINE THEREOF) AND LOT 4 IN TURNPIKE INDUSTRIAL SUBDIVISION, BEING A RESUBDIVISION OF LOT 13 IN ARTHUR T. MCINTOSH'S BLUE ISLAND FARMS, BEING A SUBDIVISION OF THE EAST 1/4 OF THE SOUTHWEST 1/4 AND THE NORTH 64 RODS OF THE SOUTHEAST 1/4 AND THAT PART OF THE EAST 1/2 OF THE WEST 1/2 OF THE NORTHEAST 1/4, LYING SOUTH OF THE CENTERLINE OF THE MIDLOTHIAN TURNPIKE, ALL IN SECTION 3, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THEREFROM THE SOUTH 33.00 FEET OF THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTHWEST 1/4, CONVEYED TO THE MIDLOTHIAN AND BLUE ISLAND RAILROAD) ALL IN COOK COUNTY, ILLINOIS.