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Doc#: 1104047019 Fee: \$68.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/09/2011 01:27 PM Pg: 1 of 17

This instrument was prepared by
and please return recorded copy to:

Elizabeth C. Darke, Esq.
Dykema Gossett PLLC
10 S. Wacker Drive, 2300
Chicago, IL 60606

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CHANGE IN TERMS AGREEMENT

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CHANGE IN TERMS AGREEMENT

2-7
4361642 (1/1)
(4 4369853)

THIS CHANGE IN TERMS AGREEMENT (this "Agreement") is made as of the 23rd day of December, 2010, but is effective as of October 10, 2010 by and among **DUPAGE 6 LLC**, an Illinois limited liability company ("Borrower") and **CHARLES T. MUDD**, an individual ("Guarantor") (Borrower and Guarantor are sometimes hereinafter referred to collectively as the "Obligors") and **FIRST BANK OF HIGHLAND PARK**, an Illinois banking association, its successors and assigns ("Lender").

RECITALS:

A. Lender heretofore made a loan to Borrower in the original principal amount of Seven Million Sixty Thousand and No/100 Dollars (\$7,060,000.00) (the "Senior Loan") evidenced by that certain Promissory Note dated as of February 23, 2006 made by Borrower and payable to the order of Lender in the principal amount of the Senior Loan (as amended, restated or replaced from time to time, the "Senior Note").

B. Lender heretofore made a second loan to Borrower in the original principal amount of Three Hundred Seventy Thousand and No/100 Dollars (\$370,000.00) (the "Junior Loan," and together with the Senior Loan, the "Loans") evidenced by that certain Promissory Note dated as of April 21, 2006 made by Borrower and payable to the order of Lender in the principal amount of the Junior Loan (as amended, restated or replaced from time to time, the "Junior Note", and together with the Senior Note, the "Notes").

C. The Senior Note is secured by, among other things, (i) that certain Mortgage dated as of February 23, 2006 made by Borrower in favor of Lender, which mortgage encumbers certain real estate located at 1801 N. Bissell, 1722 W. Carmen Avenue, 1703-5 West Catalpa, 1624 W. Touhy, 3813-15 N. Wilton, and 2154 W. North Avenue, Chicago, Illinois, each as legally described on Exhibit "A" attached hereto (the "Property") and recorded in the Office of the Recorder of Cook County, Illinois (the "Recorder's Office") on May 9, 2006 as Document Number 0612932127 (as amended, restated or replaced from time to time, the "Mortgage"), (ii) that certain Assignment of Rents dated as of February 23, 2006 made by Borrower in favor of Lender and recorded in the Recorder's Office on May 9, 2006, as Document No. 0612932128 (as amended, restated or replaced from time to time, the "Assignment of Rents"), (iii) a Change in Terms Agreement dated as of May 23, 2008 from Borrower and Guarantor in favor of Lender (the "Senior Loan First Change in Terms Agreement"), (iv) a Change in Terms Agreement dated as of July 30, 2009 from Borrower and Guarantor in favor of Lender (the "Senior Loan Second Change in Terms Agreement" and together with the Senior Loan First Change in Terms Agreement, the "Senior Loan Change in Terms Agreements") and (v) certain other documents and instruments (the Note, the Mortgage, the Assignment of Rents, the Senior Guaranty (as hereinafter defined), the Senior Loan Change in Terms Agreements, and all of the other documents and instruments which evidence, secure or otherwise have been executed in connection with the Senior Loan, in their original form and as amended, restated or replaced from time to time, are sometimes collectively referred to herein as the "Senior Loan Documents").

D. The Senior Loan is further secured by a certain Commercial Guaranty dated as of February 23, 2006 from Guarantor to Lender (as amended, restated or replaced from time to time, the "Senior Guaranty").

PREPARED BY & MAIL TO: DYKEMA, GOSSETT PLLC
10 SOUTH WACKER DRIVE, SUITE 2300
CHICAGO, IL 60606

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E. The Junior Note is secured by, among other things, (i) that certain Junior Mortgage dated as of April 21, 2006 made by Borrower in favor of Lender, which mortgage encumbers the Property and was recorded in the Recorder's Office on May 11, 2006 as Document Number 0613131001 (as amended, restated or replaced from time to time, the "Mortgage"), (ii) a Change in Terms Agreement dated as of April 23, 2007 from Borrower and Guarantor in favor of Lender (the "Junior Loan First Change in Terms Agreement"), (iii) a Change in Terms Agreement dated as of July 30, 2009 from Borrower and Guarantor in favor of Lender (the "Junior Loan Second Change in Terms Agreement" and together with the Junior Loan First Change in Terms Agreement, the "Junior Loan Change in Terms Agreements") (iv) the Senior Loan Documents and (v) certain other documents and instruments (the Note, the Mortgage, the Junior Guaranty (as hereinafter defined), the Junior Loan Change in Terms Agreements and the Senior Loan Documents, and all of the other documents and instruments which evidence, secure or otherwise have been executed in connection with the Junior Loan, in their original form and as amended, restated or replaced from time to time, are sometimes collectively referred to herein as the "Junior Loan Documents"). The Junior Loan documents and the Senior Loan Documents are collectively referred to herein as the "Loan Documents."

F. The Junior Loan is further secured by a certain Commercial Guaranty dated as of April 21, 2006 from Guarantor to Lender (as amended, restated or replaced from time to time, the "Junior Guaranty"). The Junior Guaranty and the Senior Guaranty are collectively referred to herein as the "Guaranties."

G. Borrower is in default under all of the Loan Documents due to Borrower's failure to pay the entire principal balance to the Lender when due on August 10, 2010 (the "Maturity Date"). Borrower failed to repay to Lender the outstanding principal balance of the Notes, together with all other amounts due and payable to Lender under the Notes and the other Loan Documents on the Maturity Date. Such failure constitutes an Event of Default under the Loan Documents (such Events of Default described in this grammatical paragraph are collectively referred to herein as the "Existing Defaults").

H. Notwithstanding the existence of the Existing Defaults, Borrower, Guarantor, 2722-24 West Logan, L.L.C., an Illinois limited liability company, 6441 North Newgard LLC, an Illinois limited liability company, 1919 West Argyle LLC, an Illinois limited liability company and Lender entered into a Forbearance Agreement dated as of August 10, 2010 (the "Forbearance Agreement"), pursuant to which the Lender agreed to (among other things), forbear from exercising the rights and remedies available to Lender under the Loan Documents or otherwise available at law or in equity as a result of the existence of the Existing Defaults until October 10, 2010, provided that Obligors (among other things) comply with all of the terms and conditions set forth in the Forbearance Agreement, the Rodgers Park Forbearance Agreement and the Dayton Forbearance Agreement (each, as defined in the Forbearance Agreement) and perform all the terms and conditions of those Agreements.

I. Obligors have complied with all of the terms and conditions set forth in the Dayton Forbearance Agreement, and Obligors are currently in compliance with the terms of the Rodgers Park Forbearance Agreement. Notwithstanding the fact that the Rodgers Park Forbearance Agreement remains in effect, Lender has agreed to enter into this Agreement modifying certain terms of the Loan Documents pursuant to Section 1(d) of the Forbearance Agreement, subject to the terms of Section 2(h) below and on the terms and subject to the conditions specified herein.

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NOW, THEREFORE, in consideration of the premises and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Guarantor and Lender hereby agree as follows:

1. **Incorporation of Recitals; Definitions.** The Obligors and Lender hereby acknowledge and agree that the Recitals set forth above are true and accurate and by this reference are hereby incorporated herein and made a part hereof. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Mortgages (as modified by the Senior Loan Change in Terms Agreements and the Junior Loan Change in Terms Agreements, as the case may be).

2. **Amendments to Loan Documents.** The Loan Documents are hereby amended and modified as follows and to the extent of any inconsistency or conflict between the terms of the Loan Documents and the following terms, the following terms shall govern and control:

(a) **Senior Note Principal Amount Outstanding.** As of the date hereof, the outstanding principal amount of the Senior Note is Six Million Nine Hundred Sixty-Eight Thousand Six Hundred Thirty and 78/100 Dollars (\$6,968,630.78).

(b) **Junior Note Principal Amount Outstanding.** As of the date hereof, the outstanding principal amount of the Junior Note is Three Hundred Sixty-Nine Thousand Seven Hundred Sixty and 28/100 Dollars (\$369,760.28).

(c) **Maturity Dates.** The Maturity Dates of each of the Notes is hereby changed from August 10, 2010 to August 10, 2013. Any reference to the Maturity Date in any of the Loan Documents shall mean "August 10, 2013."

(d) **Senior Note Interest Rate.** The interest rate under the Senior Note will be the Index (as defined in the Senior Loan Second Change in Terms Agreement), provided, however, in no event will the interest rate be less than three percent (3.00%) per annum and greater than six and one half percent (6.50%) per annum.

(e) **Junior Note Interest Rate.** The interest rate under the Junior Note will be the Index (as defined in the Junior Loan Second Change in Terms Agreement), provided, however, in no event will the interest rate be less than three percent (3.00%) per annum and greater than six and one half percent (6.50%) per annum.

(f) **Senior Note Payment Terms** The payment terms for Senior Note are hereby modified as follows:

(i) Commencing on the tenth (10th) day of December, 2010 and on the tenth (10th) day of each successive month thereafter, to and including the tenth (10th) day of the month in which the Maturity Date occurs, Borrower shall make payments to Lender of principal in the amount of \$10,750.00, plus interest accruing at the interest rate.

(ii) The Senior Loan shall be due and payable, and Borrower hereby promises to pay the outstanding principal amount of the Senior Loan to Lender, together with all accrued interest thereon then remaining unpaid and all other unpaid amounts, charges, fees and expenses outstanding under the Senior Note or under any of the other

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Loan Documents, on the Maturity Date, subject to earlier prepayment as provided in the Senior Note or as otherwise provided herein or in any other Loan Document.

(g) Junior Note Payment Terms. The payment terms for Junior Note are hereby modified as follows:

(i) Commencing on the tenth (10th) day of December, 2010 and on the tenth (10th) day of each successive month thereafter, to and including the tenth (10th) day of the month in which the Maturity Date occurs, Borrower shall make payments to Lender of principal in the amount of \$1,050.00, plus interest accruing at the interest rate.

(ii) The Junior Loan shall be due and payable, and Borrower hereby promises to pay the outstanding principal amount of the Junior Loan to Lender, together with all accrued interest thereon then remaining unpaid and all other unpaid amounts, charges, fees and expenses outstanding under the Junior Note or under any of the other Loan Documents, on the Maturity Date, subject to earlier prepayment as provided in the Junior Note or as otherwise provided herein or in any other Loan Document.

(h) Event of Default Modifications.

(i) If Obligors fail to cooperate with Lender and/or fail to comply with all terms set forth in the Rodgers Park Forbearance Agreement, such failure(s) shall constitute an Event of Default under the Loan Documents.

(ii) Notwithstanding anything contained in the Loan Documents to the contrary, the commencement of any proceeding under any bankruptcy laws by or against Guarantor, individually, shall not constitute an "Event of Default" under the Loan Documents.

(i) Waiver of Right to Redeem. The "Sale of Property" paragraph in each of the Mortgages is hereby deleted in its entirety and substituted with the following paragraph:

"Waiver of Right to Redeem - Waiver of Appraisal, Valuation, Etc. Grantor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such Moratorium Laws. Grantor for itself and all who may claim through or under it waives any and all right to have the Real Property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Lender may determine in its sole discretion. Lender shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Lender so purchasing at any such sale shall have the right to be credited

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upon the amount of the bid made therefor by Lender with the amount payable to Lender out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Note, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Grantor acknowledges that the Property does not constitute agricultural real estate, as defined in Section 5/15-1201 of the Illinois Mortgage Foreclosure Act, 735 ILCS 5/Art. XV et seq. (the "Act"), or residential real estate, as defined in Section 5/15-1219 of the Act. To the fullest extent permitted by law, Grantor, on behalf of Grantor, and each and every person acquiring any interest in, or title to the Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (i) any and all rights of redemption pursuant to Section 5/15-1201(b) of the Act, and (ii) any and all rights of reinstatement."

(j) Jurisdiction and Venue. The "Choice of Venue" paragraph in each of the Notes, the Mortgages, the Assignment of Rents and the Guaranties is hereby deleted in its entirety and substituted with the following paragraph: (any reference to "Borrower" below shall be deemed to mean "Borrower" as defined in the Notes and "Grantor," as defined in the Mortgages and Assignment of Rents; and any reference to "this Agreement" shall be deemed to mean "this Mortgage", "this Assignment" or "this Guaranty," as the case may be):

"Jurisdiction and Venue. EACH OF BORROWER AND GUARANTOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER OR GUARANTOR ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT, SHALL BE LITIGATED IN THE CIRCUIT COURT OF LAKE COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. IF LENDER INITIATES ANY ACTION OR PROCEEDING LENDER MAY BRING SUCH ACTION OR PROCEEDING IN ANY COURT WHICH HAS JURISDICTION. EACH BORROWER AND GUARANTOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY LENDER IN ANY SUCH COURT, AND WAIVES ANY CLAIM THAT LAKE COUNTY, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS OR THE COUNTY WHERE THE PROPERTY IS LOCATED IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. EACH BORROWER AND GUARANTOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER OR GUARANTOR AT THE ADDRESS TO WHICH

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NOTICES ARE TO BE SENT PURSUANT TO THIS AGREEMENT. SHOULD BORROWER OR GUARANTOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER OR GUARANTOR, AS THE CASE MAY BE, SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY LENDER AGAINST BORROWER OR GUARANTOR, AS THE CASE MAY BE, AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER OR GUARANTOR SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY LENDER OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY LENDER OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND EACH OF BORROWER AND GUARANTOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION."

(k) Waiver of Jury Trial. The following Waiver of Jury Trial paragraph is hereby added to each of the Notes, the Mortgages, the Assignment of rents and the Guaranties (any reference to "Borrower" below shall be deemed to mean "Borrower" as defined in the Notes and "Grantor," as defined in the Mortgages and the Assignment of Rents; and any reference to "this Agreement" shall be deemed to mean "this Mortgage", "this Assignment" or "this Guaranty," as the case may be):

"Waiver of Jury Trial. BORROWER AND LENDER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, ANY RELATED DOCUMENT, OR ANY RELATIONSHIP BETWEEN BORROWER AND LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE LOAN EVIDENCED BY THE NOTE AND IN THE OTHER LOAN DOCUMENTS."

3. Extension Period. Subject to fulfillment of the following conditions, Borrower shall have the right, exercisable no later than forty-five (45) days prior to the Maturity Date of each the Notes, to extend the Maturity Date of the Senior Note and the Junior Note to August 10, 2016, at a then market rate of interest with principal repayments on each of the Notes based on a 22 year amortization schedule:

(a) There shall be no violations of any of Borrower's covenants in the Loan Documents as of the date of such notice or the Maturity Date;

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(b) No default or Event of Default shall have occurred during the term of the Loan (other than the Existing Defaults);

(c) No event which upon the passage of time or which upon the passage of time or giving of notice (or both) would constitute an Event of Default exists and no Event of Default shall exist as of the date of such notice or the Maturity Date; and

(d) Prior to the Maturity Date, Obligors and Lender enter into a Change in Terms Agreement for the Senior Loan Documents and the Junior Loan Documents satisfactory to Lender which evidences the extension of the Maturity Date upon the terms set forth herein.

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

5. **Required Deliveries.** This Agreement shall become effective on the date (the "Effective Date") on which all of the following conditions have been satisfied:

(a) This Agreement has been duly executed by Borrower and Guarantor and delivered to Lender (and Lender has executed this Agreement).

(b) Borrower has delivered to Lender resolutions from Borrower authorizing the execution of this Agreement and the provisions contained herein.

(c) Borrower has delivered to Lender a current good standing certificate for Borrower from the Secretary of State of Illinois.

(d) Lender has received from Greater Illinois Title Company, as issuing agent for Chicago Title Insurance Company (the "Title Insurer") a date down endorsement to Loan Policy Nos. 004361642 and 004369853 (the "Title Policies"), effective as of the date of this Agreement, insuring the first priority lien of the Senior Mortgage and the second priority lien of the Junior Mortgage, subject only to (i) the exceptions set forth in the Title Policies as of its date of issuance, and (ii) such other liens and encumbrances as are acceptable to Lender, in Lender's sole and absolute discretion.

(e) Borrower has delivered to Lender such additional documents as Lender reasonably may require.

The Obligors' failure to deliver the aforementioned documents and items to Lender on or before December 24, 2010, shall, at the option of Lender, result in this Agreement (including all agreements of Lender contained herein) being null and void and of no further force and effect.

6. **References; No Novation.** All references to the Notes and the other Loan Documents contained in any of the Loan Documents or in this Agreement shall be deemed to refer to each of such documents as and to the extent modified by this Agreement. This Agreement shall not constitute a novation, satisfaction and accord, cure, release and/or satisfaction of the Note and/or the other Loan Documents, but shall constitute an amendment thereof upon the terms expressly set forth herein.

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7. **Defaults.** Borrower represents and warrants that, as of the date hereof, no Event of Default or event or condition which could become an Event of Default with the giving of notice or passage of time, or both, exists under any of the Loan Documents, other than the Existing Defaults. Borrower further acknowledges and agrees that an Event of Default under the Loan Documents shall be deemed to exist upon the occurrence of a breach by any of the Obligors of any of the representations, warranties, covenants or agreements of the Obligors set forth in this Agreement

8. **Reaffirmation of Guaranties.** Guarantor hereby ratifies and affirms the obligations of Guarantor under the Guaranties and agrees that the Guaranties are and shall remain in full force and effect following the execution and delivery of this Agreement and all of the obligations of Guarantor thereunder shall expressly extend to and include the payment when due of all amounts owing to Lender under this Agreement and under the Loan Documents, as amended by this Agreement. The representations and warranties of Guarantor set forth in the Guaranties are, as of the date hereof, true, complete and correct and Guarantor does not know of any default thereunder. The Guaranties continue to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder.

9. **Collateral; Confirmation of Security Interest.** Borrower hereby acknowledges and confirms that all of the obligations of Borrower to Lender under the Loan Documents, as amended by this Agreement, and under this Agreement, are and shall be secured by valid and perfected, first priority liens and security interests in all of the real property, personal property and other property, property rights and collateral described in the Loan Documents.

10. **No Defenses; Binding Effect of Documents.**

(a) Borrower represents and warrants there is not any condition, event or circumstance existing, or any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending or threatened affecting Borrower, Guarantor or the Property, or which would prevent Borrower from complying with or performing its obligations under the Loan Documents, and no basis for any such matter exists. Borrower hereby acknowledges, confirms and agrees that: (1) each of the Loan Documents to which it is a party and this Agreement have been duly executed and delivered to Lender by Borrower, and each is in full force and effect as of the date hereof, (2) the agreements and obligations of Borrower contained in such Loan Documents and in this Agreement constitute the legal, valid and binding obligations of Borrower, enforceable against it in accordance with their respective terms, and Borrower has no valid defense to the enforcement of such obligations, and (3) Lender shall be entitled to exercise any and all of the rights, remedies and benefits provided for in the Loan Documents, this Agreement and otherwise available at law or in equity.

(b) Guarantor represents and warrants there is not any condition, event or circumstance existing, or any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending or threatened affecting Guarantor, Borrower or the Property, or which would prevent Guarantor from complying with or performing his obligations under the Guaranties and all other Loan Documents executed by Guarantor, and no basis for any such matter exists. Guarantor hereby acknowledges, confirms and agrees that: (a) the Guaranties, all other Loan Documents executed by Guarantor and this Agreement have been duly executed and delivered to Lender by Guarantor, and are in full force and effect as of the date hereof, (b) the

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agreements and obligations of Guarantor contained in the Guaranties and all other Loan Documents executed by Guarantor constitute the legal, valid and binding obligations of Guarantor, enforceable against him in accordance with their respective terms, and Guarantor does not have any valid defense to the enforcement of such obligations, and (c) Lender shall be entitled to the rights, remedies and benefits provided for in the Guaranties executed by Guarantor, all other Loan Documents executed by Guarantor and this Agreement and applicable law.

11. **RELEASE.** EACH OBLIGOR HEREBY ACKNOWLEDGES AND AGREES THAT, AS OF THE DATE HEREOF, HE OR IT HAS NO DEFENSE, COUNTERCLAIM, OFFSET, CROSS COMPLAINT, CLAIM OR DEMAND OF ANY KIND OR NATURE WHATSOEVER THAT CAN BE ASSERTED TO REDUCE OR ELIMINATE ALL OR ANY PART OF HIS OR ITS LIABILITY TO REPAY THE OBLIGATIONS EVIDENCED AND/OR SECURED BY THE LOAN DOCUMENTS OR TO SEEK AFFIRMATIVE RELIEF OR DAMAGES OF ANY KIND OR NATURE FROM LENDER. EACH OBLIGOR HEREBY VOLUNTARILY AND KNOWINGLY RELEASES AND FOREVER DISCHARGES LENDER AND ITS PREDECESSORS, AGENTS, EMPLOYEES, COUNSEL, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES") FROM ALL POSSIBLE CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, DAMAGES, COSTS, EXPENSES AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, ANTICIPATED OR UNANTICIPATED, SUSPECTED OR UNSUSPECTED, FIXED, CONTINGENT OR CONDITIONAL, OR AT LAW OR IN EQUITY, IN ANY CASE ORIGINATING IN WHOLE OR IN PART ON OR BEFORE THE DATE THIS AGREEMENT IS EXECUTED THAT SUCH OBLIGOR MAY NOW OR HEREAFTER HAVE AGAINST THE RELEASED PARTIES, IF ANY, IRRESPECTIVE OF WHETHER ANY SUCH CLAIMS ARISE OUT OF CONTRACT, TORT, VIOLATION OF LAW OR REGULATIONS, OR OTHERWISE, AND THAT ARISE FROM ANY LOAN, THE EXERCISE OF ANY RIGHTS AND REMEDIES UNDER THE LOAN DOCUMENTS, AND/OR NEGOTIATION FOR AND EXECUTION OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CONTRACTING FOR, CHARGING, TAKING, RESERVING, COLLECTING OR RECEIVING INTEREST IN EXCESS OF THE HIGHEST LAWFUL RATE APPLICABLE, IN EACH CASE OCCURRING ON OR BEFORE THE DATE OF THIS AGREEMENT.

12. **Authority to Execute Agreement; No Conflict.** Each Obligor represents and warrants that he or it has full power and authority to execute and deliver this Agreement and to perform his or its respective obligations hereunder. Upon the execution and delivery hereof, this Agreement will be valid, binding and enforceable upon each Obligor in accordance with its terms. Execution and delivery of this Agreement does not and will not contravene, conflict with, violate or constitute a default under any applicable law, rule, regulation, judgment, decree or order or any agreement, indenture or instrument to which any Obligor is a party or is bound.

13. **Further Acknowledgment.** The Obligors hereby acknowledge and agree that but for the agreement of the Obligors to each and every provision of this Agreement, Lender would not have entered into this Agreement.

14. **Notices.** Except for any notice required under applicable law to be given in another manner, any notice, demand, request or other communication which any party hereto may be required or may desire to give under this Agreement shall be in writing and shall be deemed to have been properly given (i) if hand delivered or if sent by telecopy, effective upon receipt or (ii) if delivered by overnight courier service, effective on the day following delivery to such courier service, or (iii) if mailed by United States registered or certified mail, postage

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prepaid, return receipt requested, effective two (2) days after deposit in the United States mails; addressed in each case as follows:

To Lender:	First Bank of Highland Park 633 Skokie Boulevard Northbrook, Illinois 60062 Attn: Ken Kreisel
With Copy to:	Dykema Gossett PLLC 10 South Wacker Drive, Suite 2300 Chicago, Illinois 60606 Attn: C. Elizabeth Darke
To Borrower and Guarantor:	c/o Kass Management Service Inc. 2000 North Racine Suite 3400 Chicago, Illinois 60614 Attn: Charles T. Mudd
With Copy to:	Palmisano & Lovstrand 19 South LaSalle Street Suite 900 Chicago, Illinois 60603 Joseph Palmisano, Esq.

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party(ies) hereto.

15. **Time of Essence.** Time is strictly of the essence of this Agreement and the full and complete performance of each and every term, provision and condition hereof.

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

17. **Agreement Binding; Joint and Several.** This Agreement shall be binding on the Obligors and their respective heirs, legal representatives, legatees, successors and permitted assigns, and shall inure to the benefit of Lender and its successors and assigns. The obligations and duties of the Obligors hereunder shall be joint and several.

18. **Continued Effectiveness; Inconsistency.** Except as expressly provided herein to the contrary, the Loan Documents shall remain in full force and effect in accordance with their respective terms. In the event of any inconsistency between the terms of the Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control.

19. **Miscellaneous.** The Obligors acknowledge that there are no other agreements or representations, either oral or written, express or implied, with Lender not embodied in this Agreement or in the Loan Documents. The Loan Documents and this Agreement, together, represent a complete integration of all prior and contemporaneous agreements and

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understandings of the parties hereto. THE OBLIGORS HEREBY ACKNOWLEDGE, AGREE, REPRESENT, AND WARRANT THAT THE OBLIGORS HAVE THOROUGHLY READ AND REVIEWED THE TERMS AND PROVISIONS OF THIS AGREEMENT AND ARE FAMILIAR WITH THE SAME, THAT THE TERMS AND PROVISIONS CONTAINED HEREIN ARE CLEARLY UNDERSTOOD BY THE OBLIGORS AND HAVE BEEN FULLY AND UNCONDITIONALLY CONSENTED TO BY THEM AND THAT THEY HAVE HAD FULL BENEFIT AND ADVICE OF COUNSEL OF THEIR OWN SELECTION IN REGARD TO UNDERSTANDING THE TERMS, MEANING AND EFFECT OF THIS AGREEMENT AND THAT THIS AGREEMENT HAS BEEN ENTERED INTO BY THEM FREELY, VOLUNTARILY, WITH FULL KNOWLEDGE, AND WITHOUT DURESS. In the event of any ambiguity and/or dispute regarding the interpretation of this Agreement, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the draftsman. The terms and provisions of this Agreement may be modified or amended only by a writing executed by the Obligors and Lender.

20. **Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement. A facsimile signature of this Agreement (or pdf version containing a signature) shall be deemed an original and shall bind the signing party(ies).

21. **Waiver of Jury Trial.** LENDER, ON THE ONE HAND, AND BORROWER AND GUARANTOR, ON THE OTHER HAND, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL OF THEIR CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THE LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OR OMISSIONS OF ANY OF THEM, AND NEITHER THE LENDER, NOR BORROWER OR GUARANTOR SHALL SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY ANY OF THE LENDER, BORROWER OR GUARANTOR EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY THE PARTY AGAINST WHOM ENFORCEMENT OF THE MODIFICATION OR RELINQUISHMENT IS SOUGHT. IN FURTHERANCE OF THE FOREGOING, IT IS ACKNOWLEDGED THAT ANY LITIGATION BASED UPON OR ARISING OUT OF ANY ACTION OR INACTION OF LENDER IN FURTHERANCE OF LENDER'S RIGHTS AND REMEDIES UNDER THE LOAN DOCUMENTS WILL BE COVERED BY THE WAIVER OF THE RIGHT TO A JURY TRIAL CONTEMPLATED BY THIS PARAGRAPH.

[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:

DUPAGE 6 LLC, an Illinois limited liability company

By: [Signature]
Name: Charles T. Mudd
Title: Manager

GUARANTOR:

[Signature]
CHARLES T. MUDD, individually

LENDER:

FIRST BANK OF HIGHLAND PARK, an Illinois banking association

By: [Signature]
Name: PATRICK F. STALLONE
Title: EXECUTIVE VICE PRESIDENT

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF Cook) .ss

I Jo Ann Houston, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Charles T. Mudd, the manager of DuPage 6 LLC, an Illinois limited liability company (the "LLC"), 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/her own free and voluntary act and as the free and voluntary act of the LLC for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 23 day of December, 2010.

Jo Ann Houston
Notary Public

My Commission Expires: 10/24/14



STATE OF Illinois)
)
COUNTY OF Cook) .ss

I Jo Ann Houston, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that CHARLES T. MUDD, individually 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 23 day of December, 2010.

Jo Ann Houston
Notary Public

My Commission Expires: 10/24/14



UNOFFICIAL COPY

STATE OF Illinois)
) .ss
COUNTY OF Cook)

I Sonja Brown, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Patrick F. Stallone the EMP of **FIRST BANK OF HIGHLAND PARK**, an Illinois 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 and as the free and voluntary act of the Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21st day of December, 2010.

Sonja Brown
Notary Public

My Commission Expires: 6/5/2012



UNOFFICIAL COPY

STATE OF Illinois)
) .ss
COUNTY OF Cook)

I Sonja Brown, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Patrick F. Stallone the SVP of **FIRST BANK OF HIGHLAND PARK**, an Illinois 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 and as the free and voluntary act of the Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27th day of December, 2010.

Sonja Brown
Notary Public

My Commission Expires: 6-5-2012



Property of Cook County Clerk's Office

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EXHIBIT A

THE PROPERTY

PARCEL 1:

THE NORTH 10 FEET OF LOT 20 AND ALL OF LOT 21 IN SICKINGER'S SUBDIVISION OF LOTS 7 AND 8 IN SUBDIVISION BY L.C.P. FREER, RECEIVER, OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. 11-32-327-005

PARCEL 2:

LOT 146 IN SHERIDAN DRIVE SUBDIVISION BEING A SUBDIVISION OF NORTH 3/4 OF EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH THAT PART OF THE WEST 1/2 OF SAID NORTHWEST 1/4 OF SECTION 17 WHICH LIES NORTH OF THE SOUTH 800 FEET AND EAST OF GREENBAY ROAD, IN COOK COUNTY, ILLINOIS.

14-17-103-014