

# UNOFFICIAL COPY

10/12

This instrument prepared by and after recording, please return to:

Doc#: 1134849024 Fee: \$40.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/14/2011 10:28 AM Pg: 1 of 3

Bruce M. Friedman  
Harrison & Held, LLP  
333 W. Wacker Drive  
Suite 1700  
Chicago, Illinois 60606  
PIN: 13-36-203-007-0000



Doc#: 1225155074 Fee: \$58.00  
Eugene "Gene" Moore  
Cook County Recorder of Deeds  
Date: 09/07/2012 03:13 PM Pg: 1 of 11

*Re-recorded to include referenced Agreement*

## MODIFICATION OF MORTGAGE

**THIS MODIFICATION OF MORTGAGE** (this "**Modification**") is made as of July 30, 2010 by and among Z&B Properties, LLC, an Illinois limited liability company ("**Borrower**"), and Park Ridge Community Bank, an Illinois banking association, its successors and assigns ("**Lender**").

### RECITALS

(A) Lender has made certain Loans to Borrower which are described and defined in an Agreement of even date herewith among Borrower, Lender, Zachary Wagman and Barry Brandwein (the "**Agreement**").

(B) One of the Loans was originally collateralized and secured by the Property described in Exhibit A attached hereto (the "Property") pursuant to a Mortgage dated April 23, 2007 and recorded on May 15, 2007 as Document No. 0713526047 with the Cook County Recorder of Deeds (the "**Mortgage**").

(C) Pursuant to the Agreement, Borrower has agreed to modify the Mortgage as hereinafter set forth.

NOW THEREFORE, it is agreed as follows:

- (1) **Recitals.** The recitals are incorporated by reference and made a part hereof. Capitalized terms used herein which are not otherwise defined shall have the meanings set forth in this Agreement.
- (2) **Indebtedness.** The term "Indebtedness" as contained in this Mortgage is redefined and modified as follows:

The word "Indebtedness" shall mean all principal, interest, or other amounts due to Lender directly or indirectly related to the Loans or arising pursuant to the Agreement or any of the Loan Documents.

REPUBLIC TITLE CO. PK120911-5

# UNOFFICIAL COPY

The Mortgage as amended hereby secures all of the Indebtedness.

(3) **Maximum Amount.** At no time shall the principal amount of the Indebtedness secured by the Mortgage as amended hereby exceed \$3,500,000.

**IN WITNESS WHEREOF**, the Borrower has executed this Modification as of the day and year first above written.

Z&B PROPERTIES, LLC

By: \_\_\_\_\_  
Zachary Wagman, Manager

By: \_\_\_\_\_  
Barry Brandwein, Manager

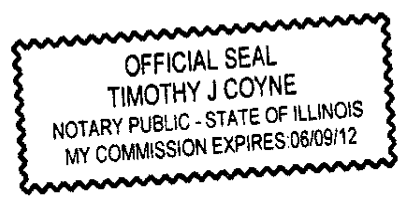
STATE OF ILLINOIS     )  
  ) ss.  
COUNTY OF COOK     )

I Timothy J. Coyne, a Notary Public in and for said County, in the Sate aforesaid, DO HEREBY CERTIFY that Zachary Wagman and Barry Brandwein are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as Managers of Z&B Properties, LLC, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act for the uses and purposes therein set forth.

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

Timothy J. Coyne  
Notary Public

My Commission Expires: 6-9-2012



# UNOFFICIAL COPY

## EXHIBIT A

### THE PROPERTY

LOT 1 IN THE SUBDIVISION OF LOT 1, BEING A SUBDIVISION BY JOHN GRAY AS GUARDIAN OF 8 ACRES LYING NEXT EAST OF AND ADJOINING THE WEST 35.62 ACRES OF THAT PART OF THE NORTHEAST  $\frac{1}{4}$  LYING NORTH OF THE MILWAUKEE PLANK ROAD, IN SECTION 36, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

The Real Property or its address is commonly known as 2557 FULLERTON AVENUE, CHICAGO, IL 60647. The Real Property tax identification number is 13-36-203-007-0000.

# UNOFFICIAL COPY

## AGREEMENT

This Agreement is entered as of this 30th day of July, 2010, by and between Park Ridge Community Bank ("Lender"), Z&B Properties, LLC, an Illinois limited liability company ("Z&B Properties"), Zachary Wagman ("Wagman"), and Barry Brandwein ("Brandwein" and with Wagman and Z&B Properties, collectively, the "Borrowers").

WHEREAS, Z&B Properties is the owner of the Properties (as hereinafter defined), each located in the City of Chicago, State of Illinois; and

WHEREAS, Wagman and Brandwein collectively own one hundred percent (100%) of the membership interests in Z&B Properties; and

WHEREAS, Lender has advanced certain existing loans (as hereinafter defined) to Borrowers which are secured by the Mortgages (as hereinafter defined); and

WHEREAS, Borrowers desire to restructure and modify the Existing Loans on the terms set forth in this Agreement; and

WHEREAS, Borrowers desire to obtain a New Loan (as hereinafter defined) in the amount not to exceed \$50,000 on the terms set forth in this Agreement; and

WHEREAS, the Existing Loans are currently in default and the parties hereto desire to cure and resolve said defaults by entering into this Agreement.

NOW, THEREFORE, it is agreed as follows:

1. Recitals. The recitals are incorporated by reference and made a part hereof.
2. Definitions.
  - (a) The term "Accounts" shall have the meaning set forth in Section 11 of this Agreement.
  - (b) The term "Excess Cash" shall have the meaning set forth in Section 7 of this Agreement.
  - (c) The term "Existing Loans" shall mean the following described loans previously advanced by Lender to Borrowers each as from time to time amended, modified and/or extended:
    - (i) loan in the original principal amount of \$468,750 advanced on or about February 12, 2007;
    - (ii) loan in the original principal amount of \$41,250 advanced on or about March 30, 2007;

# UNOFFICIAL COPY

- (iii) loan in the original principal amount of \$423,500 advanced on or about December 22, 2004;
- (iv) loan in the original principal amount of \$648,250 advanced on or about June 21, 2005;
- (v) loan in the original principal amount of \$895,000 advanced on or about April 10, 2007;
- (vi) loan in the original principal amount of \$186,200 advanced on or about September 27, 2002;
- (vii) loan in the original principal amount of \$96,000 advanced on or about September 14, 2006; and
- (viii) loan in the original principal amount of \$360,000 advanced on or about April 23, 2007.

The current principal balance of the Existing Loans (exclusive of late fees and reimbursable costs and expenses) is \$3,011,828.

- (d) The term “**Loans**” shall mean the Existing Loans and the New Loan. The term “**Loan**” shall mean any of the Loans.
- (e) The term “**Loan Documents**” shall mean:
  - (i) all existing agreements or other documents relating directly or indirectly to any of the Existing Loans,
  - (ii) all agreements or other documents relating directly or indirectly to the New Loan, and
  - (iii) this Agreement and any agreements or other documents executed and delivered in accordance with this Agreement.
- (f) The term “**Manager**” shall have the meaning set forth in Section 11 hereof.
- (g) The term “**Mortgages**” shall mean the mortgages on the Properties described in Schedule I attached to this Agreement.
- (h) The term “**Properties**” shall mean the following properties each located in Chicago, Illinois:
  - (i) 2555 W. Fullerton;
  - (ii) 2915-21 W. George;
  - (iii) 2557 W. Fullerton;

# UNOFFICIAL COPY

- (iv) 2746 W. Fullerton;
- (v) 1627 W. Rascher; and
- (vi) 3008-10 W. Cullom, each as legally described in the Mortgages.

The term "Property" shall mean any of the Properties.

(i) Capitalized terms used herein which are not otherwise defined shall have the meanings set forth in the Loan Documents.

3. New Loan. Lender agrees to advance a new loan to Borrowers in an amount not to exceed \$50,000 (the "New Loan") to enable Borrowers to pay all unpaid 2008 real estate taxes (including penalties and late fees) due with respect to each of the Properties. Lender shall advance only that amount required to pay the unpaid 2008 real estate taxes (including penalties and late fees) from the proceeds of the New Loan. The New Loan shall bear interest on the unpaid principal balance from time to time outstanding at the rate of 4.5% per annum. The Maturity Date of the New Loan shall be July 1, 2012. On the Maturity Date, the principal balance of the New Loan plus all accrued and unpaid interest shall be due and payable. Prior to the Maturity Date, interest on the unpaid principal balance of the New Loan from time to time outstanding shall be paid monthly in arrears. All interest payments on the New Loan shall be payable not later than the fifteenth (15<sup>th</sup>) day of each month. The New Loan shall be secured as hereinafter set forth. Borrowers authorize and direct Lender to disburse the proceeds of the New Loan to the Cook County Treasurer for payment of 2008 real estate taxes on the Properties and to disburse the excess proceeds, if any, to satisfy Borrowers' obligations to pay fees and expenses pursuant to this Agreement.

4. Maturity Date. The Maturity Date of each of the Existing Loans shall be modified to mean July 1, 2012. The term "Maturity Date" as used in the Loan Documents shall be modified to mean July 1, 2012. July 1, 2012 shall be the Maturity Date of the New Loan.

5. Interest Rate Modification. The interest rate applicable to each of the Existing Loans is modified retroactive to January 1, 2010 and continuing to the Maturity Date to the rate of 4.5% per annum. The New Loan shall bear interest at the rate of 4.5% per annum.

6. Payment Terms. From the date hereof, the Borrowers shall pay interest only on the Loans monthly in arrears. The principal balance of all Loans plus all accrued and unpaid interest shall be due and payable on the Maturity Date. All monthly interest payments shall be payable not later than the fifteenth (15<sup>th</sup>) day of each month. All interest shall be computed based upon a year consisting of 365 days.

7. Tax Escrow Payments. On a quarterly basis, all Excess Cash (as hereinafter defined) in the Accounts (as hereinafter defined), to the extent such cash is available, shall be transferred to a real estate tax escrow account established by Lender for payment of real estate taxes from time to time payable on the Properties. The term "Excess Cash" shall mean the aggregate cash balance in the Accounts as of the last business day of each calendar quarter to the extent that such aggregate cash balance exceeds the sum of (i) \$10,000 and (ii) all current unpaid expenses relating to the operation of the Properties. The tax escrow will be funded, subject to

# UNOFFICIAL COPY

the availability of sufficient Excess Cash, at the rate of \$4,000/month retroactive to January, 2010. Within five (5) business days of the end of each calendar quarter, and provided Excess Cash is available, Borrowers shall cause the transfer of the Excess Cash to the real estate tax escrow for payment of the tax escrow payment, if any, due for the preceding calendar quarter and shall deliver to Lender a statement setting forth the basis for the calculation of the tax escrow payment signed by the Manager. Funds, if any, in the tax escrow will be utilized to pay real estate taxes due and payable on the Properties.

8. First Installment 2009 Real Estate Taxes. Lender and Borrowers acknowledge that the First Installment 2009 real estate taxes for the Properties (the "**2009 First Installment**") became due and payable March 1, 2010, and that the 2009 First Installment remains unpaid. Lender agrees that, provided the 2009 First Installment is paid on or before June 1, 2011, the failure to timely pay the 2009 First Installment shall not be deemed an Event of Default pursuant to the Loan Documents.

9. Additional Payment. On or before August 20, 2010, Borrowers shall pay Lender all accrued and unpaid interest on the Existing Loans up to, but not including, August 15, 2010, in the aggregate amount of \$58,156.43 computed at the rate set forth in Section 5 hereof commencing as of January 1, 2010. Lender hereby represents and warrants that such computation does not include any default, late fees or other similar charges and upon payment of such amount, Lender hereby waives any and all right to assess such fees or charges with respect to delinquent payments or other events occurring prior to the date hereof.

10. Collateral.

(a) All of the Loans (including the New Loan) will be cross-collateralized and cross-defaulted. Without limiting the forgoing, the Loans (including the New Loan) will be secured by the existing Mortgage recorded against each of the Properties and the existing Assignment of Rents recorded against each of the Properties. In the event of a proposed sale of any of the Properties, Lender shall release its Mortgage with respect to such Property in the event that the sale price is acceptable to Lender in its sole and exclusive discretion. In no event shall Lender be under any obligation to release its Mortgage on any Property if the net sales proceeds are insufficient to pay in full the Existing Loan originally secured by the Property being sold. Notwithstanding the foregoing, Lender shall release its Mortgage on any Property if the net sales proceeds are sufficient to pay in full the Existing Loan originally secured by the Property unless Lender determines based upon a then current Appraisal of the Property that the sale price of the Property is less than the then current fair market value of the Property. Lender shall provide Borrowers with a copy of any Appraisal relating to the fair market value of any such Property.

(b) All of the Loans (including the New Loan) shall be secured by a pledge of the Accounts (as hereinafter defined). Borrowers hereby authorize the Manager to execute and deliver an Account Pledge Agreement granting Lender a security interest in the Accounts to secure the Loans.

(c) The following Event of Default is added to all of the Loan Documents:



# UNOFFICIAL COPY

(i) Borrowers shall be in default on any obligation due and owing to Lender, including, without limitation, any Loan after expiration of any applicable cure period.

11. Management of Properties. Borrowers shall cause the Properties to be managed by an independent property manager (the "Manager") selected by Borrowers and approved by Lender, which approval shall not be unreasonably withheld. The Manager shall establish operating accounts (the "Accounts") with Lender relating to the management of the Properties, and all revenues derived from the operation of the Properties shall be deposited in the Accounts so established by Manager with Lender. On an ongoing basis, and until all Loans are paid in full, Borrowers authorize the Manager to communicate directly with the Lender with respect to matters relating to the operation and management of the Properties.

12. Loan Documents Remain in Force. Except as modified hereby, the Loan Documents remain in full force and effect in accordance with these respective terms. Except as expressly provided herein, nothing contained herein shall modify or impair Borrowers' obligations under the Loan Documents.

13. Reimbursement of Expenses. Borrowers shall reimburse Lender for all costs and expenses, including reasonable attorneys' fees, incurred by Lender in connection with the preparation of this Agreement and all loan modification documents required hereby and for all costs and expenses incurred by Lender in connection with any required recording or filing of any such modification documents.

14. Acknowledgements. Borrowers hereby acknowledge and agree that, except as modified hereby, that the Loan Documents remain in full force and effect in accordance with their respective terms and that Borrowers reaffirm their respective obligations under the Loan Documents as modified hereby and all obligations, representations, warranties, covenants, terms and conditions contained in the Loan Documents subject only to the modifications contained herein. Borrowers hereby waive any and all defenses or setoffs with respect to the obligations of Borrowers under the Loan Documents based upon any claimed acts or omissions of Lender, whether known or unknown, occurring prior to the date of this agreement, except to the extent that Lender improperly calculated any principal or interest payments prior to the date hereof or improperly applied any payments made by the Borrower prior to the date hereof. Notwithstanding the foregoing or any other provision or term contained herein, the parties hereto hereby agree that in the event of a conflict or inconsistency between this Agreement and any of the other Loan Documents, the terms and provisions of this Agreement shall control over such other Loan Documents.

15. Counterparts. This Agreement may be executed in counterparts. Signatures provided by facsimile or electronic transmission shall be deemed original signatures and shall be valid and binding in all respects.

16. Financial Statements. On an annual basis (a) not later than January 31 of each calendar year, each of Wagman and Brandwein shall provide Lender with a personal financial statement in customary form setting forth their respective assets and liabilities and (b) within ten (10) days of filing with the Internal Revenue Service, each of Wagman and Brandwein shall



# UNOFFICIAL COPY

provide Lender with a copy of their respective federal income tax returns (including all schedules thereto).

17. General Provisions.

- (a) This Agreement is to be performed in, and shall be governed by and enforced and construed in accordance with the laws of the State of Illinois.
- (b) This Agreement cannot be changed or amended orally, but only by an agreement in writing, signed by each of the parties hereto.
- (c) The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- (d) The Borrowers hereby agree, at their own expense, to execute and deliver, from time to time, any and all further, or other, instruments, and to perform such acts, as Lender may reasonably request to effect the purposes of this Agreement and to secure to Lender the benefits of all rights, authorities and remedies conferred upon Lender by the terms of this Agreement.
- (e) This Agreement contains the complete and entire understanding of the parties hereto with respect to the subject matter hereof, and this Agreement supersedes any and all prior agreements and understandings (whether written or oral) between the parties hereto with respect to the subject matter hereof.
- (f) The section and subsection headings herein are for convenience only and shall not be used to construe or interpret this Agreement.

*[signatures appear on the following page]*

# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first set forth above.

Park Ridge Community Bank

By: Timothy J. Lyons VP

Z&B Properties, LLC

By: \_\_\_\_\_, Manager

Zachary Wagman

By: \_\_\_\_\_, Manager

Barry Brandwein

Zachary Wagman

Barry Brandwein

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## SCHEDULE I MORTGAGES

1. Construction Mortgage dated March 30, 2007, and recorded as Document No. 0712008122 - Cook County, Illinois. (3008-10 W. Cullom, Chicago, Illinois)
2. Mortgage dated February 12, 2007, and recorded as Document No. 0705133201 – Cook County, Illinois. (3008-10 W. Cullom, Chicago, Illinois)
3. Mortgage dated December 22, 2004, and recorded as Document No. 0506902218 - Cook County, Illinois. (2746 W. Fullerton, Chicago, Illinois)
4. Construction Mortgage dated June 21, 2005, and recorded as Document No. 0518133034 - Cook County, Illinois, as modified and extended. (1627 W. Rascher, Chicago, Illinois)
5. Mortgage dated April 10, 2007, and recorded as Document No. 0713149083 - Cook County, Illinois. (2915-21 W. George Street, Chicago, Illinois)
6. Construction Mortgage dated September 27, 2002, and recorded as Document No. 0021219651 - Cook County, Illinois, as modified and extended. (2555 W. Fullerton, Chicago, Illinois)
7. Mortgage dated September 14, 2006, and recorded as Document No. 0627846137 - Cook County, Illinois as modified and extended. (2555 W. Fullerton, Chicago, Illinois)
8. Mortgage dated April 23, 2007, and recorded as Document No. 0713526047 - Cook County, Illinois. (2557 W. Fullerton, Chicago, Illinois)
9. Mortgage dated June 21, 2005 and recorded as Document No. 0519605180 – Cook County, Illinois as modified and extended. (2915-21 W. George, Chicago, Illinois.)