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PREPARED BY AND
WHEN RECORDED RETURN
TO:

Reginald L. Parks, Esq.
Hinshaw & Culbertson LLP
222 North LaSalle Street
Suite 300
Chicago, Illinois 60601



Doc#: 0434302331
Eugene "Gene" Moore Fee: \$48.00
Cook County Recorder of Deeds
Date: 12/08/2004 01:13 PM Pg: 1 of 13

Above Space for Recorder's Use Only

MODIFICATION AGREEMENT AND ASSUMPTION OF MORTGAGE

THIS MODIFICATION AGREEMENT AND ASSUMPTION OF MORTGAGE ("Modification Agreement") is dated this 22 day of November, 2004, and is made by FIRST MIDWEST BANK ("Lender"), and CICERO LEASING, LLC, an Illinois limited liability company ("Cicero").

RECITALS

WHEREAS, Alsip Leasing Company is an Illinois corporation ("Alsip");

WHEREAS, on or about May 23, 2003, Lender made a mortgage loan to Alsip (the "Alsip Loan") in the principal sum of TWO MILLION THREE HUNDRED THOUSAND AND NO/DOLLARS (\$2,300,000.00), evidenced by the following documents (collectively, the "Alsip Loan Documents"):

- a. Mortgage Note dated May 23, 2003 (the "Note") in the amount of the Alsip Loan.
- b. Mortgage, and Security Agreement (the "Mortgage") dated May 23, 2003, recorded on June 10, 2003, in the Recorder of Deeds Office, Cook County, Illinois, as Document No. 0316133183, and encumbering the property ("Property") legally described on the attached Exhibit A;
- c. The other documents identified on Exhibit B attached hereto and made a part hereof.

WHEREAS, on or about May 23, 2003, Lender made a secured, revolving loan to McAllister Equipment Co., an Illinois corporation ("McAllister") in the principal sum of TWO MILLION SIX HUNDRED THOUSAND AND NO/DOLLARS (\$2,600,000.00) (the "McAllister Loan"), evidenced by certain loan documents as amended, modified, or replaced from time to time (collectively, the "McAllister Loan Documents");

WHEREAS, Alsip and McAllister are related entities in the business of wholesale, renting and leasing heavy construction equipment and both stand to benefit mutually from this Modification Agreement;

WHEREAS, Cicero has requested that Lender provide financing to Cicero to purchase the Property from Alsip; and

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WHEREAS, in furtherance of same, Cicero has requested that Alsip's Loan Documents be modified in certain respects, to extend the term of the Alsip Loan and, for Cicero, among other things, to assume Alsip's obligations to Lender under the Alsip Loan Documents, and Lender has agreed to modify the same upon the terms and conditions hereafter set forth.

NOW, THEREFORE, in consideration of the payments made and to be made by Cicero, as hereinafter provided, and the performance of terms, covenants, conditions and agreements hereafter set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, IT IS HEREBY AGREED AS FOLLOWS:

1. Assumption of Mortgage:

a. Cicero's Acknowledgment of Alsip Loan Documents and Outstanding Balance.

Cicero acknowledges that it is fully familiar with the terms of the Alsip Loan Documents and that such documents, including the "Security Agreement", the "Environmental Indemnity", the "Assignment of Leases and Rents", the "UCCs" and the "Lease Subordination Agreement" (as such terms are hereafter defined), express the entire understanding of the parties regarding the Alsip Loan. Cicero acknowledges the outstanding principal balance of the Alsip Loan as of the date hereof is \$2,300,000.00.

b. Cicero's Assumption of Loan Obligations. Cicero assumes and agrees to perform all of Alsip's obligations under the Alsip Loan Documents from and after the "Modification Date" (as such term is hereinafter defined), including payment of all new accrued, but unpaid interest. Without limiting the foregoing general assumption, Cicero specifically assumes and agrees to be liable for all liability pursuant to the Environmental Indemnity executed as a part of the Alsip Loan Documents from and after the date hereof whether arising from circumstances existing prior to or after the date hereof.

2. Partial Release and Consent of Guarantor. The Lender shall release Gene Harris, individually, ("Guarantor") from his liability under the Note and Mortgage and other Alsip Loan Documents, including the Environmental Indemnity and the Unconditional Guaranty.

3. Consent to Conveyance.

a. Lender consents to the transfer of the Property from Alsip to Cicero and agrees that such transfer does not constitute an Unpermitted Transfer or Non-Monetary Default under the Mortgage.

b. Cicero agrees that Lender's consent to the transfer of the Property does not constitute a waiver of the provisions of paragraph 15 of the Mortgage and that all further sales, conveyances, encumbrances and transfers of the Property shall be subject to paragraph 15 of the Mortgage.

4. Modification of Repayment Obligations of Alsip Loan Documents. As of the date hereof, the Alsip Loan Documents are hereby modified to provide for: (i) an extension of the maturity date to November 19, 2005; and (ii) payments of interest only shall be due and payable monthly on the first (1st) day of each month until the maturity date when all outstanding amounts shall be due and payable.

5. Cross Default. A failure of Cicero to comply with the obligations under this Modification Agreement, including the assumption of the Alsip Loan Documents, or a default under the

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McAllister Loan Documents or any replacement line of credit with Lender or otherwise, shall be deemed a default under the Alsip Loan Documents.

6. Lender's Expenses. Cicero agrees to pay all of Lender's reasonable legal and administrative expenses in connection with this Modification Agreement.

7. Conditions. This Modification Agreement is effective only when all of the following conditions are satisfied:

(i) This Modification Agreement has been duly executed and recorded in the land records of Cook County, Illinois; and

(ii) The Intercreditor (Subordination) Agreement for a second mortgage from Cicero to Alsip has been duly executed delivered and recorded; and

(iii) A UCC Amendment Statement naming Cicero as debtor and in a form acceptable to Lender has been filed with the Secretary of State of Illinois and the Cook County Recorder of Deeds (the "UCCs"); and

(iv) Cicero has executed a Certificate Regarding Limited Liability Company Documents confirming Cicero's organizational documents and authority to consummate this transaction ("Cicero's Certificate").

(v) All of Lender's expenses and fees arising out of this Modification Agreement, including title endorsement, recording, reasonable attorney's fees, and other out-of-pocket costs have been paid.

(vi) There is then no default or event of default under the Loan Documents, nor any event or condition which would be a default or event of default if not cured within the time allowed.

8. Bank Representations. Bank hereby represents that as of the date herewith, that: (i) Bank is not aware of any defaults under the Alsip Loan Documents; (ii) interest on the Alsip Loan is paid through November 1, 2004; and (iii) Bank does not maintain any reserves or escrows for the Alsip Loan.

9. Attorneys' Fees. If Lender seeks the advice of counsel or any suit or action is brought to enforce or interpret the terms of this Modification Agreement or the Alsip Loan Documents, Cicero shall pay all of Lender's resulting costs and expenses, including reasonable attorneys' fees. Such fees shall include, without limitation, attorneys' fees incurred at or in preparation for any trial, appeal or review or incurred to assert any defenses, rights or remedies available under federal bankruptcy law.

10. Miscellaneous.

a. Cicero represents and warrants to Lender that it has no existing defenses or claims of offset to payment of the Loan or enforcement of the Alsip Loan Documents as a result of an act or event occurring on or prior to the date hereof or any other defenses or offsets with respect to Lender's lending of funds to Cicero that may exist on or prior to the date hereof. As further consideration for this Modification Agreement, Cicero releases Lender from any and all liability, known or unknown, arising out of any act or circumstance to date with respect to the Alsip Loan or any collateral for repayment of the Alsip Loan.

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b. Cicero warrants to Lender that it has full right, power and authority to enter into this Modification Agreement and to perform all its obligations, and that all information and materials submitted by Cicero to Lender in connection with the request for this modification (specifically excluding any reports, summaries or similar materials (other than accounting materials prepared by Cicero's accountant) prepared by third party service providers) contain no material misstatement or misrepresentation nor omit to state any material fact or circumstance.

c. This document constitutes the entire Modification Agreement with respect to the assumption of the Loan and shall not be amended, modified or terminated except by a writing signed by the party to be charged therewith.

d. This Modification Agreement shall universally modify the Alsip Loan Documents. Except as provided in this Modification Agreement, the terms of the Alsip Loan Documents remain in full effect and are ratified. This Modification Agreement is not intended to and shall not be construed to impair the validity, priority or enforceability of the Alsip Loan Documents.

e. This Modification Agreement is binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

f. Any notices, consent or other communication to be given pursuant to the terms and provisions of the Alsip Loan Documents under shall be in writing and shall be served either personally (by a same-day courier service) or by "overnight" courier service (which shall be deemed received on the date of delivery thereof) or mailed by United States certified or registered mail, postage paid, return receipt requested (which shall be deemed served upon receipt or refusal thereof). All such notices, consents or other communications shall be addressed to Cicero, Agent and Lender at their respective addresses set forth below or to such other addresses as Cicero, Agent, Lender or other such parties, to whom copies of notices or other communications are to be mailed, may direct in writing:

If to the Cicero:

Cicero Leasing, LLC
12500 S. Cicero Avenue
Alsip, Illinois 60803
Attn: Jack Moser

with a copy to:

Beck, Chaet & Bamberger, S.C.
Two Plaza East
Suite 1085
330 E. Kilbourn Avenue
Milwaukee, WI 53202
Attn: Mike Stein

If to Lender:

First Midwest Bank
17500 S. Oak Park Avenue
Tinley Park, IL 60477

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Attn: Gavin Weir

with a copy to:

Hinshaw & Culbertson, LLP
222 N. LaSalle Street
Suite 300
Chicago, IL 60601
Attn: Dean Parker

11. Counterparts. This Modification Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

DATED the day and year first above written.

LENDER:

FIRST MIDWEST BANK

By: *W. J. J.*
Title: Regional President

CICERO:

Cicero Leasing, LLC,
an Illinois limited liability company

By: _____

Its: _____

GUARANTOR:

Gene Harris, individually

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Attn: Gavin Weir

with a copy to:

Hinshaw & Culbertson, LLP
222 N. LaSalle Street
Suite 300
Chicago, IL 60601
Attn: Dean Parker

11. Counterparts. This Modification Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

DATED the day and year first above written.

LENDER:

FIRST MIDWEST BANK

By: _____
Title: _____

CICERO:

Cicero Leasing, LLC
an Illinois limited liability company

By: [Signature]
Its: Authorized Member

GUARANTOR:

Gene Harris, individually

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If to Lender:

First Midwest Bank
17500 S. Oak Park Avenue
Tinley Park, IL 60477
Attn: Gavin Weir

with a copy to:

Hinshaw & Culbertson, LLP
222 N. LaSalle Street
Suite 300
Chicago, IL 60601
Attn: Dean Parker

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DATED the day and year first above written.

LENDER:

FIRST MIDWEST BANK

By: _____
Title: _____

CICERO:

Cicero Leasing, LLC,
an Illinois limited liability company

By: _____
Its: _____

GUARANTOR:



Gene Harris, individually

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STATE OF Illinois)
) SS.
COUNTY OF Cook)

The undersigned, a Notary Public in and for and residing in said County, in the State aforesaid, DOES HEREBY CERTIFY that Michael Leonard, of FIRST MIDWEST BANK ("Lender"), 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 the said instrument as his own free and voluntary acts and as the free and voluntary act of Lender, for the uses and purposes therein set forth for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 19th day of November, 2004.



Bettjean Zboniak
Notary Public

My commission expires: 4-6-07

STATE OF _____)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that _____, personally known to me to be the _____ of CICERO LEASING, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of limited liability company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of November, 2004.

Notary Public

My commission expires:

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STATE OF _____)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for and residing in said County, in the State aforesaid, DOES HEREBY CERTIFY that Gavin Weir, of FIRST MIDWEST BANK ("Lender"), 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 the said instrument as his own free and voluntary acts and as the free and voluntary act of Lender, for the uses and purposes therein set forth for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of November, 2004.

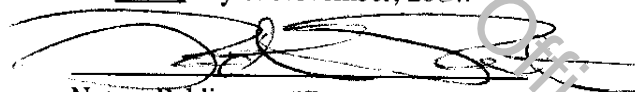
Notary Public

My commission expires:

STATE OF WISCONSIN)
) SS.
COUNTY OF MILWAUKEE

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that JACK NOSTR, personally known to me to be the AUTHORIZED AGENT FOR ALCANTARA LEASING, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of limited liability company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 22nd day of November, 2004.



Notary Public - STATE OF WI
EXPIRES 1-23-05

My commission expires:

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EXHIBIT A

Legal Description

The property which is the subject of this Modification Agreement is situated in the County of Cook, State of Illinois, and is legally described as follows:

Address: 12500 South Cicero Avenue
Alsip, Illinois 60803

Tax No(s): 24-28-401-005-0000
24-28-401-006-0000

PARCEL 1A:

THE NORTHEAST ¼ (EXCEPT THE NORTH 30 ACRES AND EXCEPT THE SOUTH 176.00 FEET THEREOF) OF THE SOUTHEAST ¼ OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN; ALSO EXCEPT THAT PART OF SAID NORTHEAST ¼ (EXCEPT THE NORTH 30 ACRES AND EXCEPT THE SOUTH 176.00 FEET THEREOF) OF THE SOUTHEAST ¼ OF SAID SECTION 28, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

(EXCEPTION 1)

LYING EAST OF A LINE INTERSECTING THE SOUTH LINE OF SAID 30 ACRES, AT A DISTANCE OF 75.0 FEET WESTERLY FROM THE EAST LINE OF SAID NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 28, AND INTERSECTING THE NORTH LINE OF SAID SOUTH 176.00 FEET OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼, A DISTANCE OF 100.0 FEET WESTERLY FROM THE EAST LINE OF SAID NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 28; ALSO THAT PART OF THE NORTHEAST ¼ (EXCEPT THE NORTH 30 ACRES AND EXCEPT THE SOUTH 176.00 FEET THEREOF) OF THE SOUTHEAST ¼ OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

(EXCEPTION 2)

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 28 AND PROCEEDING THENCE NORTHERLY ALONG THE EAST LINE OF SAID SECTION 28 FOR A DISTANCE OF 1507.60 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 176.00 FEET OF THE NE ¼ OF THE SOUTHEAST ¼ OF SECTION 28; THENCE WESTERLY ALONG THE NORTH LINE OF SAID SOUTH 176.00 FEET OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 28, FOR A DISTANCE OF 800.0 FEET FOR THE POINT OF BEGINNING; THENCE STILL WESTERLY ALONG THE PREVIOUS COURSE EXTENDED FOR A DISTANCE OF 335.0 FEET TO A POINT; THENCE NORTHEASTERLY ALONG A LINE FORMING AN ANGLE OF 140 DEGREES, 11 MINUTES, 40 SECONDS WITH THE PREVIOUS LINE EXTENDED, FOR A DISTANCE OF 78.10 FEET TO A POINT; THENCE SOUTHEASTERLY ALONG A LINE FORMING AN ANGLE OF 50 DEGREES, 06 MINUTES, 37 SECONDS WITH THE PREVIOUS LINE EXTENDED, FOR A DISTANCE OF 279.51 FEET TO THE POINT OF BEGINNING; ALSO THAT PART OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ (EXCEPT THE NORTH 30 ACRES AND EXCEPT THE SOUTH 176.00 FEET THEREOF) OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

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(EXCEPTION 3)

BEGINNING AT A POINT IN THE NORTH LINE OF THE SOUTH 176.00 FEET OF THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SAID SECTION 28, 100 FEET WEST OF THE EAST LINE OF SAID SECTION 28; THENCE WEST A DISTANCE OF 50.0 FEET TO A POINT; THENCE NORTHEASTERLY ALONG A STRAIGHT LINE, A DISTANCE OF 177.1 FEET TO A POINT IN THE SOUTH LINE OF THE NORTH 30 ACRES OF THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SAID SECTION 28, A DISTANCE OF 125.0 FEET WEST OF THE EAST LINE OF SAID SECTION 28; THENCE EAST ALONG THE SOUTH LINE OF THE NORTH 30 ACRES OF THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SAID SECTION 28, A DISTANCE OF 50.0 FEET TO A POINT DISTANT 75.0 FEET WEST OF THE EAST LINE OF SAID SECTION 28; THENCE SOUTHWEST ALONG A STRAIGHT LINE, A DISTANCE OF 177.1 FEET TO THE POINT OF BEGINNING.

PARCEL 1B:

THAT PART OF THE SOUTH 176.00 FEET OF THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT SOUTHEAST CORNER OF SECTION 28; THENCE NORTH ALONG THE EAST LINE OF SAID SECTION 28, FOR A DISTANCE OF 1507.60 FEET TO A POINT; THENCE WESTERLY ALONG THE NORTH LINE OF THE SAID SOUTH 176.00 FEET OF THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 28, FOR A DISTANCE OF 100.00 FEET FOR THE POINT OF BEGINNING; THENCE STILL WESTERLY ALONG THE PREVIOUS COURSE EXTENDED, FOR A DISTANCE OF 700.0 FEET TO A POINT; THENCE SOUTHEASTERLY TO A POINT ON THE SOUTH LINE OF THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 28, SAID POINT BEING 445.0 FEET WEST OF THE EAST LINE OF THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 28; THENCE EASTERLY ALONG THE SOUTH LINE OF THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 28, A DISTANCE OF 245.0 FEET TO A POINT; THENCE NORTHEASTERLY ALONG A LINE FORMING AN ANGLE OF 48 DEGREES, 19 MINUTES, 04 SECONDS TO THE LEFT WITH THE LAST DESCRIBED COURSE EXTENDED, FOR A DISTANCE OF 97.74 FEET TO A POINT; THENCE NORTHEASTERLY ALONG A LINE FORMING AN ANGLE OF 29 DEGREES, 35 MINUTES, 02 SECONDS TO THE LEFT, WITH THE LAST DESCRIBED COURSE EXTENDED, FOR A DISTANCE OF 108.78 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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EXHIBIT B

Other Loan Documents

1. Mortgage and Security Agreement
2. Mortgage Note
3. Assignment of Leases and Rents
4. UCC-1 Uniform Commercial Code Financing Statements ("Financing Statements")
5. Environmental Indemnity Agreement ("Environmental Indemnity")
6. Unconditional Guaranty ("Guaranty")
7. Security Agreement
8. Lease Subordination and Attachment Agreement

Property of Cook County Clerk's Office