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Loan No. 52-9520001

Doc#: 0610043031 Fee: \$46.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/10/2006 07:24 AM Pg: 1 of 12

**PREPARED BY AND
WHEN RECORDED MAIL TO:**

William S. Schwartz, Esq.
Levenfeld Pearlstein, LLC
211 Waukegan Road
Suite 300
Northfield, Illinois 60093

CA 8905943 022K 10

LOAN MODIFICATION AGREEMENT

Loan Modification Agreement ("Agreement") dated as of March 2-8, 2006, by and among **INDYMAC BANK, F.S.B.** ("Lender") and **550 ST. CLAIR, INC.**, an Illinois corporation ("Borrower").

WITNESSETH:

WHEREAS, Borrower and Lender have entered into a certain Building Loan Agreement dated February 28, 2006 (the "Loan Agreement") governing a revolving loan in the maximum outstanding amount of \$47,000,000 (the "Loan Amount"). All capitalized terms not defined herein shall have the meaning set forth in the Loan Agreement;

WHEREAS, pursuant to the terms of the Loan Agreement, Borrower executed and delivered to Lender a certain Promissory Note dated February 28, 2006, payable to Lender in the principal amount of \$47,000,000 (the "Note"), which is secured, inter alia, by the property (the "Mortgaged Property") legally described on Exhibit A attached hereto and made a part hereof, which is mortgaged to Lender pursuant to that certain Construction Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of February 28, 2006 (the "Mortgage") made by Borrower, as mortgagor, to Lender, as mortgagee, recorded in Illinois with the Cook County Recorder of Deeds on March 8, 2006 as Document No. 0606726202 (the Loan Agreement, Note, and Mortgage, together with any and all other loan and/or security documents executed in connection therewith being hereinafter referred to collectively as the "Loan Documents"); and

WHEREAS, the parties hereto desire to amend the Loan Documents to, among other things, increase the Loan Amount by an additional \$3,000,000.

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

1. AFFIRMATION OF RECITALS. The recitals set forth above are true and correct and are incorporated herein by this reference.

Box 400-CTCC

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2. AMENDMENT OF LOAN DOCUMENTS. The Loan Documents are hereby amended as follows:

2.1 Increase in Loan Amount. The Loan Amount (i.e. the maximum amount of the Loan that may be outstanding at any time) shall be increased by \$3,000,000 from \$47,000,000 to \$50,000,000. In addition to the aforesaid modification to the defined term "Loan Amount", as set forth in the Loan Agreement, Borrower and Lender acknowledge and agree that the Note, the Mortgage and all of the other Loan Documents are hereby amended to increase the amount of the loan, evidenced, secured or otherwise governed thereby to \$50,000,000.

3. LOAN FEE. In consideration for Lender's agreement to enter into this Amendment, Borrower shall pay Lender, contemporaneously with the execution and delivery of this Amendment, a loan fee of \$30,000.00.

4. OMNIBUS AMENDMENT. Each of the Loan Documents shall be deemed amended to give effect to the provisions of this Agreement without need for referencing each of the Loan Documents by name.

5. REPRESENTATIONS AND WARRANTIES. Borrower confirms and remakes all representations and warranties set forth in the Loan Documents.

6. ADDITIONAL PROVISIONS. Borrower hereby agrees:

(a) Upon request from Lender, to deliver a satisfactory Date Down Endorsement to the existing Mortgagee's title insurance policy in form and substance acceptable to Lender covering the date of recording of this Agreement.

(b) To pay to Lender all costs incurred or to be incurred by or on behalf of Lender by reason of the matters specified herein and the preparation of this Agreement, including, without limitation, Lender's legal fees.

7. GOVERNING LAW. This Agreement shall be construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles.

8. CONSTRUCTION. This Agreement shall not be construed more strictly against Lender merely by virtue of the fact that the same has been prepared by Lender or its counsel.

9. GENDER. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders and any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

10. ENTIRE AGREEMENT. Borrower and Lender each acknowledge that there are no other agreements or representations, either oral or written, express or implied, not embodied in this Agreement and the Loan Documents, which, together, represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lender, and, except as amended herein, the provisions of the Loan Documents are hereby ratified and confirmed.

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11. BENEFIT. This Agreement shall be binding upon and shall inure to the benefit of Borrower and Lender, and their respective successors, assigns, grantees, heirs, executors, personal representatives, and administrators.

12. RATIFICATION; AUTHORITY. Except as herein amended, the Loan Documents shall remain in full force and effect, and all of the terms and provisions of the Loan Documents, as herein amended, are hereby ratified and reaffirmed. Borrower represents to Lender that there is no other ownership interest, mortgage lien, trust deed, or other interest, now outstanding against the Mortgaged Property, other than the lien of the Loan Documents; and that the lien of the Mortgage as previously subsisting and as herein amended, has been, is, and shall remain a valid first, prior and paramount lien on the Mortgaged Property, as described on Exhibit A attached hereto, enjoying the same or superior priority with respect to all other claims upon the Mortgaged Property as prevailed prior to the execution of this Agreement. Borrower has duly authorized, executed and delivered this Agreement, and acknowledges that the Loan Documents are valid and enforceable in accordance with their terms against Borrower.

13. PRIORITY OF MORTGAGE. All of the Mortgaged Property shall remain in all respects subject to the lien, charge and encumbrance of the Mortgage, as herein amended, and nothing herein contained and nothing done pursuant hereto, shall affect the lien, charge or encumbrance of the Mortgage, as herein amended, or the priority thereof with respect to other liens, charges, encumbrances or conveyances, or release or affect the liability of any party or parties whomsoever who may now or hereafter be liable under or on account of the Loan Documents, as herein amended.

14. CONSENT TO AMENDMENT. Borrower acknowledges that it has thoroughly read and reviewed the terms and provisions of this Agreement and is familiar with same, that the terms and provisions contained herein are clearly understood by it and have been fully and unconditionally consented to by it, and it has had full benefit and advice of counsel of its own selection or the opportunity to obtain the benefit and advice of counsel of its own selection, in regard to understanding the terms, meaning and effect of this Agreement, and that this Agreement has been entered into by it freely, voluntarily, with full knowledge, and without duress, and that in executing this Agreement, Borrower is relying on no other representations, either written or oral, or express or implied, made to it.

15. NO DEFENSES, RELEASE. As of the date of this Agreement, Borrower acknowledges that it has no defense, offset, or counterclaim to any of its obligations under the Loan Documents. In addition to the foregoing (and to the extent of any such defense, offset or counterclaim), and as additional consideration of the amendment of the Loan Documents by Lender as herein set forth, Borrower hereby releases and forever discharges Lender, its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successor and assigns and all persons, firms, corporations, and organizations in its behalf of and from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which Borrower may now have or claim to have against Lender, as of the date hereof, whether presently known or unknown, and of every nature and extent whatsoever on account of or in any way relating to, concerning, arising out of or founded upon the Loan Documents, as herein amended, including, but not limited to, all such loss or damage of any kind heretofore sustained, or that may arise, as a consequence of the dealings between the parties up to and including the date hereof.

16. COUNTERPARTS. It is understood and agreed that this Agreement may be executed in several counterparts, each of which shall, for all purposes, be deemed an original

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and all of such counterparts, taken together, shall constitute one and the same Agreement, even though all of the parties hereto may not have executed the same counterpart of this Agreement.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK;

SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, this instrument has been executed by the parties hereto in manner and form sufficient to bind them, as of the day and year first above written.

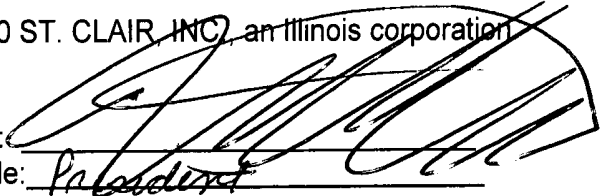
"LENDER":

INDYMAC BANK, F.S.B.

By: _____
Title: _____

"BORROWER":

550 ST. CLAIR, INC, an Illinois corporation

By: 
Title: President

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, this instrument has been executed by the parties hereto in manner and form sufficient to bind them, as of the day and year first above written.

"LENDER":

INDYMAC BANK, F.S.B.

By: 
Title: VICE PRESIDENT

"BORROWER":

550 ST. CLAIR, INC., an Illinois corporation

By: _____
Title: _____

Property of Cook County Clerk's Office

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CONSENT OF GUARANTORS TO LOAN MODIFICATION AGREEMENT

WHEREAS, the undersigned Guarantors of the "Obligations," as defined in the Loan Agreement (the "Guarantors"), are related to Borrower through some common ownership or control, or otherwise, and, therefore, it will be to the Guarantors' direct interest and financial advantage to enable Borrower to restructure the Obligations.

NOW THEREFORE, in consideration of the foregoing, the Guarantors hereby consent to this Loan Modification Agreement. Guarantors confirm the continuing validity of their guaranties and indemnities and acknowledge that their guaranties and indemnities of or pertaining to the Obligations, as amended from time to time, and any security interest granted to secure payment and/or performance of their guaranties and indemnities shall survive the execution and performance of this Agreement. The Guarantors agree that their guaranties and indemnities will remain in full force and effect until the Obligations are paid and performed in full and that their guaranties and indemnities are not released or in any way expanded or reduced hereby. The terms and provisions of the Guarantors' guaranties and indemnities are incorporated herein by reference as though fully set forth herein.

The undersigned hereby waive any claim or other right which the undersigned may now have against the Lender, its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors and assigns of and from all damages, loss, claims, counterclaims, demands, liabilities, offsets, obligations, actions and causes of action whatsoever which Guarantors may now have or claim to have against Lender, as of the date hereof, whether presently known or unknown and of every nature and extent whatsoever on account of or in any way touching, concerning, arising out of or founded upon the Loan, the Loan Documents or performance of the undersigned's obligations under their guaranties and indemnities, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, indemnification, any right to participate in any claim or remedy of Lender against the Borrower or any collateral security therefor, which Lender now has or hereafter acquires; whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

Guarantors:



Mark Sutherland, individually



Alexander Pearsall, individually

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STATE OF ILLINOIS)
)
COUNTY OF _____)

On this _____ day of _____, 2006, before me, the undersigned notary public, personally appeared _____, the _____ of Indymac Bank, F.S.B., proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that [he/she] signed it voluntarily for its stated purpose.

(official signature and seal of notary)

My commission expires: _____

STATE OF ILLINOIS)
)
COUNTY OF COOK)

On this 28 day of MARCH, 2006 before me, the undersigned notary public, personally appeared MARK SUTHERLAND, ALEX PEARSAU of 550 St. Clair, Inc., an Illinois corporation, proved to me through satisfactory evidence of identification, which was DRIVERS LICENSE, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Chris Steinys
(official signature and seal of notary)

My commission expires: 7/20/08

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STATE OF ILLINOIS)
)
COUNTY OF _____)

On this _____ day of _____, 2006, before me, the undersigned notary public, personally appeared _____, the _____ of Indymac Bank, F.S.B., proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that [he/she] signed it voluntarily for its stated purpose.

*See Attached
California All Purpose
Acknowledgment*

(official signature and seal of notary)

My commission expires: _____

STATE OF ILLINOIS)
)
COUNTY OF _____)

On this _____ day of _____, 2006, before me, the undersigned notary public, personally appeared _____, _____ of 550 St. Clair, Inc., an Illinois corporation, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

(official signature and seal of notary)

My commission expires: _____

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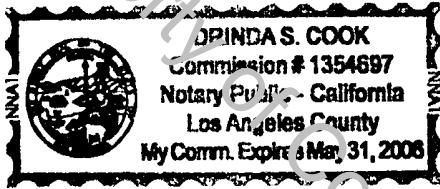
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Los Angeles } ss.

On March 30, 2006 before me, Drinda S Cook, notary public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Resar Okuma
Name(s) of Signer(s)

Personally known to me
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Drinda S Cook
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Loan Modification Agreement
Document Date: March 28, 2006 Number of Pages: 10

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



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STATE OF ILLINOIS)
COUNTY OF COOK)

On this 28 day of MARCH, 2006, before me, the undersigned notary public, personally appeared Mark Sutherland, in his individual capacity as Guarantor, proved to me through satisfactory evidence of identification, which was DRIVERS LICENSE, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Chris Steinys
(official signature and seal of notary)

My commission expires: 7/20/08

STATE OF ILLINOIS)
COUNTY OF COOK)

On this 28 day of MARCH, 2006, before me, the undersigned notary public, personally appeared Alexander Pearsall, in his individual capacity as Guarantor, proved to me through satisfactory evidence of identification, which was DRIVERS LICENSE, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Chris Steinys
(official signature and seal of notary)

My commission expires: 7/20/08

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EXHIBIT A

Legal Description of Mortgaged Property

LOT "A" IN MARTIN'S CONSOLIDATION OF PART OF BLOCK 21 IN KINZIE ADDITION TO CHICAGO, A SUBDIVISION OF THE NORTH FRACTIONAL SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN NUMBER: 17-10-122-019-0000

COMMON ADDRESS: 550 ST. CLAIR, CHICAGO, ILLINOIS

Property of Cook County Clerk's Office