

# UNOFFICIAL COPY



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Doc#: 0713631068 Fee: \$42.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/16/2007 12:26 PM Pg: 1 of 10

Ticor Title Insurance

## LOAN AND MORTGAGE MODIFICATION AGREEMENT

This Loan and Mortgage Modification Agreement ("Agreement") is made and entered into as of this 27<sup>th</sup> day of April, 2007, by and among 6610 N. SHERIDAN LLC, an Illinois limited liability company ("Borrower"), AYMAN KHALIL ("Khalil") and JEFFERY OSHONA ("Oshona") (Khalil and Oshona are hereinafter collectively referred to as "Guarantors") and NATIONAL CITY BANK, a national banking association, successor by merger to National City Bank of the Midwest ("Lender").

### WITNESSETH:

**WHEREAS**, pursuant to a Loan Agreement dated December 20, 2005 by and between Lender and Borrower ("Loan Agreement"), Lender made a loan to Borrower in the original principal amount of TWELVE MILLION ONE HUNDRED NINETY FIVE THOUSAND THREE HUNDRED DOLLARS (\$12,195,300.00) ("Loan"); and

**WHEREAS**, the Loan is evidenced by a Note dated December 20, 2005 executed by Borrower and payable to the order of Lender ("Note"); and

**WHEREAS**, the Loan is secured, in part, by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated December 20, 2005 executed by Borrower, and recorded on December 27, 2005, with the office of the Cook County Recorder as Document Number 0536119042 ("Mortgage") encumbering the Premises (as defined in the Mortgage) legally described on Exhibit "A" attached hereto and made a part hereof; and

**WHEREAS**, the Loan is further secured, in part, by a Guaranty of Payment and Completion dated December 20, 2005 executed by Guarantors to and for the benefit of Lender ("Guaranty"); and

**WHEREAS**, Borrower now desires to borrow from Lender an additional ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) on the terms hereinafter provided; and

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**WHEREAS**, Borrower, Guarantors and Lender now desire to further amend the Loan Agreement, the Note, the Mortgage, the Guaranty and the other Loan Documents in the manner hereinafter set forth.

**NOW, THEREFORE**, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, the parties hereto agree as follows:

1. **Recitals; Defined Terms.** The foregoing recitals are incorporated into this Agreement as if fully set forth herein. Except as specifically defined herein, all capitalized terms used in the recitals and in the body of this Agreement shall have the definitions ascribed therefore in the Loan Agreement.
2. **Additional Proceeds.** Provided no Event of Default exists, Lender agrees to loan to Borrower an additional sum equal to ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) ("Additional Loan Proceeds") which shall be used by Borrower to replenish the interest reserve for the Loan in accordance with new Section 1.12 of the Loan Agreement set forth herein below.
3. **Status of Loan.** Borrower acknowledges and agrees that as of the date hereof, the outstanding principal balance of the Loan is TEN MILLION TWO HUNDRED NINE THOUSAND NINETY-TWO AND 39/100 DOLLARS (\$10,209,092.39) and excluding the Additional Loan Proceeds, there is ONE MILLION NINE HUNDRED FORTY-THREE THOUSAND THIRTY-SEVEN AND 61/100 DOLLARS (\$1,943,037.61) available to Borrower for subsequent Disbursements.
4. **Note Modification.** Borrower and Guarantors acknowledge and agree that the stated original principal balance of the Note is hereby increased from TWELVE MILLION ONE HUNDRED NINETY-FIVE THOUSAND THREE HUNDRED DOLLARS (\$12,195,300.00) to TWELVE MILLION TWO HUNDRED NINETY-FIVE THOUSAND THREE HUNDRED DOLLARS (\$12,295,300.00) and the Loan Documents including, without limitation, the Mortgage and the Guaranty, are hereby modified to secure the Note as above modified.
5. **Loan Agreement.**
  - (a) The second and third sentences of Section 1.7 of the Loan Agreement are hereby deleted and replaced with the following:

"Commencing on January 20, 2007 and continuing on the same day of each succeeding three (3) months thereafter, Borrower shall make monthly payments of principal of FOURTEEN THOUSAND THREE HUNDRED NINETY DOLLARS (\$14,390.00) on the Loan plus accrued interest at the applicable interest rate. Commencing on April 20, 2007 and continuing on the same day of each succeeding

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eleven (11) months thereafter, Borrower shall make monthly payments of interest only on the outstanding principal balance of the Loan at the applicable interest rate. Commencing on April 20, 2008 and continuing on the same day of each succeeding eight (8) months thereafter, through and including December 20, 2008, Borrower shall make monthly payments of principal of FOURTEEN THOUSAND THREE HUNDRED NINETY DOLLARS (\$14,390.00) on the Loan plus accrued interest at the applicable interest rate."

(b) The following is hereby inserted as new Section 1.12 of the Loan Agreement:

Section 1.12 Interest Reserve. The interest reserve ("**Interest Reserve**") for the Loan shall be TWO HUNDRED THOUSAND DOLLARS (\$200,000.00). Provided no Event of Default exists, Lender shall disburse the Interest Reserve either by payment of interest on the Loan or by reimbursement to Borrower for interest payments so made directly by Borrower. No interest shall accrue upon the Interest Reserve until disbursement thereof, whereupon such disbursement shall be deemed an advance of the proceeds of the Loan."

(c) Section 7.16 of the Loan Agreement is hereby deleted and replaced with the following:

"Commencing on April 30, 2008, the Properties shall, in the aggregate, maintain a Debt Service Coverage Ratio of not less than 1.15:1.0."

6. **Guaranty.** The number "SIX MILLION NINETY-SEVEN THOUSAND SIX HUNDRED FIFTY DOLLARS (\$6,097,650.00)" in Paragraph 5 of the Guaranty is hereby deleted and the number "SIX MILLION ONE HUNDRED FORTY-SEVEN THOUSAND SIX HUNDRED FIFTY DOLLARS (\$6,147,650.00)" is hereby inserted in its place.
7. **Mortgage.** Paragraph 36(i) of the Mortgage is hereby amended by deleting the number "TWENTY-FOUR MILLION THREE HUNDRED NINETY THOUSAND SIX HUNDRED DOLLARS (\$24,390,600.00)" and inserting the number "TWENTY-FOUR MILLION FIVE HUNDRED NINETY THOUSAND SIX HUNDRED DOLLARS (\$24,590,600.00)" in its place.
8. **Conditions Precedent.** Lender's obligations under this Agreement are expressly conditioned upon:
  - (a) The execution and delivery of this Agreement to Lender by Borrower and Guarantors;
  - (b) Delivery to Lender of a date down endorsement and amendment to Lender's Title Insurance Policy increasing the amount to TWELVE MILLION TWO HUNDRED NINETY-FIVE THOUSAND THREE HUNDRED DOLLARS (\$12,295,300.00) and showing no exceptions thereto other than the Permitted Exceptions; and

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- (c) Execution and delivery to Lender of such other documents as Lender shall reasonably require in connection with this Agreement.
9. **Additional Loan Expenses.** Borrower hereby agrees to pay all reasonable expenses, charges, costs and fees relating to this Agreement, including, without limitation, Lender's reasonable attorneys' fees in connection with the documentation and negotiation of this Agreement, and all other expenses, charges, costs and fees referred to or necessitated by the terms of this Agreement (collectively, the "Additional Loan Expenses"). In the event the Additional Loan Expenses are not paid to Lender within five (5) days after the written demand therefore by Lender, the Additional Loan Expenses shall bear interest from the date so incurred until paid at the Default Rate.
10. **Representations and Warranties.** Borrower and Guarantors each represent and warrant to Lender that: (i) each has full power and authority to execute and deliver this Agreement and to perform their respective obligations hereunder; (ii) upon the execution and delivery of this Agreement, it shall be valid, binding and enforceable upon Borrower and Guarantors in accordance with its terms; (iii) the execution and delivery of this Agreement does not and will not contravene, conflict with, violate or constitute a default under any agreement or any applicable law, rule, regulation, judgment, decree or order, or any agreement, indenture or instrument to which Borrower or any of the Guarantors is a party or by which any of said parties is bound; (iv) no Event of Default or event or condition which would become an Event of Default with the giving of notice and/or the passage of time, exists under the Loan Agreement or any other Loan Documents, as amended by this Agreement; and (v) there is not any condition, event or circumstance existing or any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending, or to the best of Borrower's or Guarantors' knowledge threatened, affecting Borrower or any of the Guarantors, or which could prevent any of said parties from complying with or performing its or their respective obligations under the Loan Documents, as amended by this Agreement, within the time limits set forth therein for such compliance for performance, and no basis for any such matter exists.
11. **Amendment.** Except as specifically modified by the terms of this Agreement, the terms and conditions of the Loan Documents shall be and remain in full force and effect and shall continue to govern the rights and obligations of the parties. Without in any way limiting the foregoing, Borrower and Guarantors hereby represent and warrant that they currently know of no defenses to the enforcement of any of the Loan Documents, as modified hereby. Borrower and Guarantors hereby restate, remake and reaffirm any and all covenants, representations and warranties contained in any of the Loan Documents, as if all such instruments had been executed as of the date hereof.
12. **General Release.** In consideration of Lender entering into this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, its members and officers and Guarantors hereby release and forever discharge Lender, its past, present and future shareholders, successors, assigns, officers, directors,

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agents, attorneys and employees together with their respective heirs, legal representatives, legatees, successors and assigns of and from all actions, claims, demands, damages, debts, losses, liabilities, indebtedness, causes of action either at law or in equity and of whatever kind or nature, whether known or unknown, direct or indirect, existing as of the date hereof, by reason of any matter, cause or thing whatsoever arising out of or relating to any matter or thing whatsoever, including, without limitation, the claims asserted or which could have been asserted by Borrower or Guarantors in connection with the transactions which are the subject of this Agreement or the Loan.

- (a) It is acknowledged that Borrower and Guarantors have read the General Release provisions of this Paragraph 12 and consulted legal counsel before executing same; that Borrower has relied upon its own judgment and that of its legal counsel in executing the General Release provisions of this Paragraph 12 and have not relied on or been induced by any representation, statement or act by any other party referenced to herein which is not referred to in this instrument; that Borrower and Guarantors enter into the General Release provisions of this Paragraph 12 voluntarily, with full knowledge of its significance; and that the General Release provisions of this Paragraph 12 are in all respects complete and final.
- (b) If any term or provision of the General Release contained herein or the application thereof to any person, entity or circumstance shall, to any extent, be held invalid and/or unenforceable by a court of competent jurisdiction, the remainder of the General Release contained herein or the application of such term or provisions to persons, entities or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of the General Release contained herein shall be valid and be enforced to the fullest extent permitted by law.


[Signature Page Follows]

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IN WITNESS WHEREOF, Borrower, Guarantors and Lender have duly authorized and executed this Loan and Mortgage Modification Agreement as of the date first above written.


## BORROWER

**6610 N. SHERIDAN LLC**, an Illinois limited liability company


By:   
 Print Name: Aymen Khalil  
 Its: Manager


## LENDER

**NATIONAL CITY BANK**, a national banking association, successor by merger to NATIONAL CITY BANK OF THE MIDWEST

By:   
 Print Name: Robert A. West  
 Its: AVP

## GUARANTORS

  
**AYMAN KHALIL**, personally

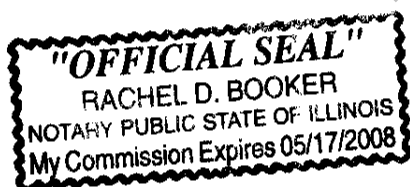
  
**JEFFERY OSHONA**, personally

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STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF COOK )

I, Rachel D. Booker, a Notary Public, in and for and  
 residing in said County, in the State aforesaid, DO HEREBY CERTIFY that Rob West,  
 Asst. Vice President of NATIONAL CITY BANK, a national banking association, successor by  
 merger to NATIONAL CITY BANK OF THE MIDWEST, who is personally known to me to be the  
 same person whose name is subscribed to the foregoing instrument as such Asst Vice Pres.  
 appeared before me this day in person and acknowledged that he/she signed and delivered the said  
 instrument as his/her own free and voluntary act and as the free and voluntary act of said bank for  
 the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 30th day of April, 2007.



Rachel D. Booker  
 NOTARY PUBLIC

My Commission Expires: 5-17-08



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STATE OF ILLINOIS     )  
   ) SS  
 COUNTY OF COOK        )

I, Myrna Askew, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that Ayman Khalil, the Manager of 6610 N. SHERIDAN LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, 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 said company for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 30 day of April, 2007.

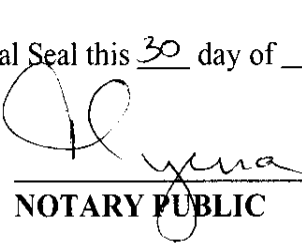
  
**Myrna Askew**  
**NOTARY PUBLIC**  
**State of Illinois**  
**My Commission Expires 04/09/2008**

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

STATE OF ILLINOIS     )  
   ) SS  
 COUNTY OF COOK        )

I, Myrna Askew, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that AYMAN KHALIL, who 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 the 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 30 day of April, 2007.

  
**Myrna Askew**  
**NOTARY PUBLIC**  
**State of Illinois**  
**My Commission Expires 04/09/2008**



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STATE OF ILLINOIS     )  
   ) SS  
 COUNTY OF COOK        )

I, Myma Askew, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that JEFFERY OSHONA, who 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 the 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 30 day of April, 2007.

[Signature]  
 NOTARY PUBLIC  
 My Commission Expires 04/09/2008

[Signature]  
 Myma Askew  
 NOTARY PUBLIC  
 State of Illinois  
 My Commission Expires 04/09/2008

**This instrument was prepared by and after recording return to:**

Andrew M. Sachs, Esq.  
 ROBBINS, SALOMON & PATT, LTD.  
 25 East Washington Street, Suite 1000  
 Chicago, Illinois 60602  
 (312) 782-9000

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## EXHIBIT "A"

### LEGAL DESCRIPTION

#### PARCEL 1:

THE NORTH 100 FEET OF LOTS 1 TO 4 INCLUSIVE (TAKEN AS A TRACT) IN BLOCK 5 IN NORTH SHORE BOULEVARD SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4, (EXCEPT THE SOUTH 30 ACRES THEREOF) OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

LOTS 1, 2, 3 AND 4 IN BLOCK 5 (EXCEPT THE NORTH 100 FEET THEREOF TAKEN AS A TRACT) IN NORTH SHORE BOULEVARD SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4, (EXCEPT THE SOUTH 30 ACRES THEREOF) OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common address: 6610-28 North Sheridan Road, Chicago, Illinois

P.I.N.: 11-32-313-027-0000  
11-32-313-028-0000