

# UNOFFICIAL COPY

***This Document Prepared By And  
When Recorded Return To:***

Tonya M. Parravano, Esq.  
CROWLEY BARRETT & KARABA,  
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Doc#: 0722546097 Fee: \$50.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 08/13/2007 02:10 PM Pg: 1 of 14

## MODIFICATION AND EXTENSION AGREEMENT

**THIS MODIFICATION AND EXTENSION AGREEMENT** is made as of the 15th day of June, 2007, by and between BROADWAY 55, LLC, an Illinois limited liability company ("**Borrower**"), INTEGRA BANK N.A., successor trustee by merger to PRAIRIE BANK AND TRUST COMPANY, under that certain Trust Agreement dated June 11, 2004 and known as Trust Number 04-088 ("**Grantor**"), ROBERT VOEGEL ("**Guarantor**"), and INTEGRA BANK, N.A., a national banking association, successor by merger to PRAIRIE BANK AND TRUST COMPANY, an Illinois banking association ("**Lender**").

### WITNESSETH:

**WHEREAS**, Borrower is the owner of the parcel of real estate commonly known as 5527-43 North Broadway Street, Chicago, Illinois, as legally described on Exhibit A attached hereto (the "**Real Property**");

**WHEREAS**, on or about June 15, 2004, Lender made a loan to Borrower in the amount of THREE MILLION SIXTY THOUSAND AND NO/100 DOLLARS (\$3,060,000.00) (the "**Loan**") to refinance the Real Property; and

**WHEREAS**, the Loan is evidenced and secured by the following instruments, each dated as of June 15, 2004, unless otherwise noted ("**Loan Documents**");

1. Business Loan Agreement between Borrower and Lender;
2. Promissory Note made by Borrower payable to Lender in the amount of THREE MILLION SIXTY THOUSAND AND NO/100 DOLLARS (\$3,060,000.00) (the "**Original Note**");
3. Mortgage from Grantor to Lender covering the Land, recorded in the Cook County Recorder's Office, Cook County, Illinois on June 16, 2004 as Document No. 0416810114 ("**Mortgage**");

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4. Assignment of Rents from Grantor and Borrower to Lender affecting the Real Property, recorded in the Cook County Recorder's Office, Cook County, Illinois on June 16, 2004 as Document No. 0416810115 ("Assignment");
5. Commercial Guaranty made by Guarantor ("Guaranty");
6. Collateral Assignment of Beneficial Interest and Control Agreement executed by Borrower ("ABI");
7. Commercial Security Agreement executed by Borrower ("Security Agreement");
8. UCC Financing Statement, recorded in the Cook County Recorder's Office, Cook County, Illinois;
9. Collateral Assignment and Subordination of Management Contract executed by Borrower, and
10. Disbursement Authorization.

**WHEREAS**, as of the date of this Agreement, the outstanding principal balance of the Loan is TWO MILLION EIGHT HUNDRED NINETY-NINE THOUSAND TWO HUNDRED NINETY-SEVEN AND NO/100 DOLLARS (\$2,899,297.87);

**WHEREAS**, Borrower, Grantor, and Guarantor, as applicable, have requested Lender to amend certain provisions of the Loan Documents in order to, among other things, extend the Maturity Date of the Loan; and

**WHEREAS**, Lender is willing to grant Borrower's, Grantor's, and Guarantor's requests on the terms and condition hereinafter set forth.

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein, and of any amendments or modifications heretofore, now or hereafter made by Lender to Borrower, the Trust, and the Guarantors, the parties hereto hereby agree as follows:

All capitalized terms used herein without definition shall have the meaning as set forth in the Loan Agreement.

1. **Amendment to Loan Agreement.** The Loan Agreement is hereby modified by amending paragraph 1.1(b) in its entirety to read as follows:

**(b) Term Loan.** Subject to the terms of this Agreement, Lender shall make a Two Million Eight Hundred Ninety-Nine Thousand Two Hundred Ninety-Seven and 87/100 Dollars (\$2,899,297.87) term loan available to Borrower. This Loan shall be payable in thirty-five (35) monthly installments of principal and interest (and real estate tax escrow) of \$21,049.81 each, with the first such payment due on July 15, 2007, with each additional payment due on the same day of each month thereafter,

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and with, unless otherwise accelerated by Lender, a final payment of all amounts due and owing on June 15, 2010 (the "Maturity Date").

2. **Amendment to Loan Agreement.** The Loan Agreement is hereby modified by amending paragraph 1.5(a) in its entirety to read as follows:

(a) **Interest on Loan.** The unpaid principal amount of the Loan shall bear interest from the date thereof until the Maturity Date (whether by acceleration or otherwise) at seven and three-tenths of one percent per annum (7.30%).

2. **Amendment to Loan Agreement.** The Loan Agreement is hereby modified by replacing the definitions of "Agreement," "Lender," "Mortgage" and "Note" in Section 7.1 with the following:

**Agreement.** The word "Agreement" means this Business Loan Agreement, including the Preamble, dated as of June 15, 2004, between Borrower and Lender, as amended by the Modification and Extension Agreement dated as of June 15, 2007 ("Modification Agreement"), and as it may be further amended from time to time, together with all exhibits and schedules attached to this Business Loan Agreement from time to time.

**Lender.** The word "Lender" means INTEGRA BANK, N.A., a national banking association, successor by merger to PRAIRIE BANK AND TRUST COMPANY, an Illinois banking corporation.

**Mortgage.** The word "Mortgage" means the Mortgage dated June 15, 2004, from Grantor with respect to the Real Property, as amended by the Modification Agreement and as further amended from time to time.

**Note.** The word "Note" means the Replacement Promissory Note from Borrower to Lender dated June 15, 2007 in the principal amount of \$2,899,297.87, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory note.

4. **Amendment to Mortgage.** The Mortgage is hereby modified by replacing the definitions of "Lender," "Loan Agreement," "Mortgage" and "Note" in Section 7.1 with the following:

**Lender.** The word "Lender" means INTEGRA BANK, N.A., a national banking association, successor by merger to PRAIRIE BANK AND TRUST COMPANY, an Illinois banking corporation. Lender is the mortgagee under this Mortgage.

**Loan Agreement.** The words "Loan Agreement" mean that certain Business Loan Agreement dated as of June 15, 2004 between Borrower and Lender, as amended by the Modification and Extension Agreement dated as of June 15, 2007 ("Modification Agreement"), and as may be further amended from time to time.

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**Mortgage.** The word "Mortgage" means this Mortgage between Grantor and Lender, (as amended by the Modification Agreement) and includes without limitation all assignments and security interest provisions relating to the Personal Property and Rents.

**Note.** The word "Note" means that certain Replacement Promissory Note executed by Borrower to Lender dated as of June 15, 2007 in the principal amount of \$2,899,297.87, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory note. **The Note has a maturity date of June 15, 2010.**

5. **Amendment to Assignment.** The Assignment is hereby modified by replacing the definitions of "Assignment," "Lender," "Loan Agreement" and "Note" in Section 5.1 with the following:

**Assignment.** The word "Assignment" means this Assignment of Rents between Grantor and Lender (as amended by the Modification and Extension Agreement dated June 15, 2007 (the "Modification Agreement")), and includes without limitation all assignments and security interest provisions relating to the Rents.

**Lender.** The word "Lender" means INTEGRA BANK, N.A., a national banking association, successor by merger to PRAIRIE BANK AND TRUST COMPANY, an Illinois banking corporation.

**Loan Agreement.** The words "Loan Agreement" mean that certain Business Loan Agreement dated as of June 15, 2004 between Borrower and Lender, as amended by Modification Agreement, and as may be further amended from time to time.

**Note.** The word "Note" means that certain Replacement Promissory Note executed by Borrower to Lender dated as of June 15, 2007 in the principal amount of \$2,899,297.87, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory note. **The Note has a maturity date of June 15, 2010.**

6. **Amendment to Security Agreement.** The Security Agreement is hereby modified by replacing the definitions of "Agreement," "Lender," "Loan Agreement," and "Note" in Section 3.1 with the following:

**Agreement.** The word "Agreement" means this Commercial Security Agreement, dated as of June 15, 2004, between Grantor and Lender (as amended by the Modification Agreement) and as this Commercial Security Agreement may be further amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

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**Lender.** The word "Lender" means INTEGRA BANK, N.A., a national banking association, successor by merger to PRAIRIE BANK AND TRUST COMPANY, an Illinois banking corporation.

**Loan Agreement.** The words "Loan Agreement" mean that certain Business Loan Agreement dated as of June 15, 2004 between Grantor and Lender, as amended by that certain Modification and Extension Agreement dated as of June 15, 2007 ("Modification Agreement"), and as may be further amended from time to time.

**Note.** The word "Note" means that certain Replacement Promissory Note executed by Grantor to Lender dated June 15, 2007 in the principal amount of \$2,899,297.87, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory note.

7. **Amendment to ABI.** The ABI is hereby modified by replacing the definitions of "Agreement," "Lender," "Loan Agreement," and "Note" in Section 6.1 with the following:

**Agreement.** The word "Agreement" means this Collateral Assignment of Beneficial Interest and Control Agreement, dated as of June 15, 2004, between Grantor and Lender, as amended by that certain Modification and Extension Agreement dated as of June 15, 2007 ("Modification Agreement") and as may be further amended from time to time, together with all exhibits and schedules attached to this Agreement from time to time.

**Lender.** The word "Lender" means INTEGRA BANK, N.A., a national banking association, successor by merger to PRAIRIE BANK AND TRUST COMPANY, an Illinois banking corporation.

**Loan Agreement.** The words "Loan Agreement" means the Business Loan Agreement dated as of June 15, 2004, between Borrower and Lender, as amended by the Modification Agreement, and as may be further amended from time to time.

**Note.** The word "Note" means that certain Replacement Promissory Note executed by Grantor to Lender dated as of June 15, 2007 in the principal amount of \$2,899,297.87, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory note.

8. **Replacement Note.** Simultaneously with the execution and delivery of this Agreement, and as a condition precedent to the modification of the Loan Documents as provided herein, Borrower shall execute and deliver to Lender a Replacement Promissory Note of even date herewith payable to Lender in the amount of TWO MILLION EIGHT HUNDRED NINETY-NINE THOUSAND TWO HUNDRED NINETY-SEVEN AND 87/100 DOLLARS (\$2,899,297.87) (the "**Replacement Note**"), in a form prepared by Lender's legal counsel. The Replacement Note shall replace and be substituted for the Original Note in its entirety.

9. **Guarantor.** Guarantor expressly agrees to the terms, provisions and conditions of this Modification Agreement. Guarantor hereby reaffirms each and every obligation for

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payment and performance as set forth in the Guaranty. Guarantor acknowledges that he remains unconditionally and absolutely liable for the due and punctual payment of the amounts set forth in his Guaranty.

10. **Conditions Precedent.** The parties agree that Lender's obligations under this Modification Agreement shall be subject to the Lender's receipt of the following:

- (a) The fully-executed Replacement Note.
- (b) A date down endorsement to Lender's title insurance policy insuring the Mortgage and this Agreement to be a valid and first lien, clear of all defects and encumbrances, except such defects and encumbrances that the Lender shall approve.
- (c) Borrower's payment of the Modification Fee and the costs and expenses of this Modification Agreement.

11. **Modification Fee.** Borrower acknowledges that, as partial consideration for Lender modifying the terms of the Loan, as set forth herein, Borrower shall pay a fee to Lender in the amount of \$995.00, plus all of Lender's attorney's fees and costs in the preparation and negotiation of this Modification Agreement, which fee has been fully earned by Lender, is nonrefundable and is due and payable to Lender as of the date of this Modification Agreement.

12. **Related Documents.** Effective as of the date hereof, and without further notice, revision, modification or amendment, the Related Documents are hereby amended as appropriate to be consistent with the terms hereof.

13. **Continuation.** Except as otherwise specifically modified or amended by the terms of this Modification Agreement, the Loan Documents and all provisions contained therein, respectively, shall continue in full force and effect.

14. **Reaffirmation.** Borrower, Guarantor and Grantor, as applicable, by execution of this Modification Agreement, hereby reaffirm, ratify, and remake the covenants, warranties and representations contained in the Loan Documents. In addition, Borrower and Grantor hereby reaffirm, ratify and remake the covenants, warranties and representations contained in the Mortgage, as modified and amended hereby, and Borrower and Grantor further acknowledge and agree that, notwithstanding the order of recording of the Mortgage and the Deed in Trust conveying title to the Real Property to Grantor, the lien of the Mortgage is valid and enforceable against Grantor's interest in the Real Property as if it had been recorded immediately subsequent to the recording of the Deed in Trust.

15. **Counterparts.** This Modification Agreement may be executed simultaneously in any number of counterparts, which shall, collectively and separately, constitute one agreement.

16. **No Defenses.** Borrower, Guarantor and Grantor, as applicable, represent to the Lender that they have no defenses, setoffs, claims or counterclaims of any kind or nature whatsoever against Lender in connection with the Loan Documents or any amendments to said

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documents or any action taken or not taken by the Lender with respect thereto or with respect to the collateral. Without limiting the generality of the foregoing, Borrower, Guarantor and Grantor, as applicable, hereby release and forever discharge Lender, its affiliates, and each of its officers, agents, employees, attorneys, insurers, successors and assigns, from any and all liabilities, or causes of action, known or unknown, arising out of any action or inaction with respect to the Loan Documents.

17. **Disclaimer.** Borrower, Guarantor and Grantor expressly disclaim any reliance on any oral representation made by Lender with respect to the subject matter of this Modification Agreement. Borrower, Guarantor and Grantor acknowledge and agree that Lender is specifically relying upon the representations, warranties, releases and agreements contained herein, and that this Modification Agreement is executed by Borrower, Guarantor and Grantor and delivered to Lender as an inducement to extend further funds to the Borrower.

18. **Costs.** Borrower agrees to pay upon demand all of Lender's out-of-pocket expenses, including attorneys' fees, incurred in connection with this Modification Agreement. Lender may pay someone else to help collect the loans secured by the Loan Documents and to enforce the Loan Documents, and the Borrower will pay that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and legal expenses, whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also will pay any court costs, in addition to all other sums provided by law.

19. **Jurisdiction, Jury Waiver.** This Modification Agreement has been delivered to Lender and accepted by Lender in the State of Illinois. If there is a lawsuit, under the Loan Documents, this Modification Agreement, Borrower, Guarantor and Grantor agree upon Lender's request to submit to the jurisdiction of the courts of Cook County, the State of Illinois. **LENDER, BORROWER, GUARANTOR AND GRANTOR HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER LENDER, BORROWER, GUARANTOR OR GRANTOR AGAINST THE OTHERS.** This Modification Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

20. **Successors and Assigns.** All covenants and agreements contained by or on behalf of Borrower, Guarantor and Grantor as applicable, shall bind their respective successors and assigns and shall inure to the benefit of Lender, its successors and assigns. Borrower, Guarantor and Grantor as applicable, shall not, however, have the right to assign their rights under this Modification Agreement or the Loan Documents or any interest therein, without the prior written consent of Lender.

(signatures to follow)

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IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed and acknowledged as of the day and year first above written.

**BORROWER:**

**BROADWAY 55, LLC**

By: Robert Voegel  
Robert Voegel, Manager

**GUARANTOR:**

Robert Voegel  
**ROBERT VOEGEL**

**GRANTOR:**

**INTEGRA BANK, N.A., as successor trustee  
to PRAIRIE BANK AND TRUST COMPANY,  
under that certain Trust Agreement  
dated June 11, 2004 and known  
as Trust Number 04-088**

By: Andrea Russell  
Its: Trust Officer

**EXCULPATORY CLAUSE**

It is expressly understood and agreed by and between the parties hereto anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings, and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that the portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such trustee and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against INTEGRA BANK N.A. under said Trust Agreement, or any part of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, which personal liability, if any, being expressly waived and released.

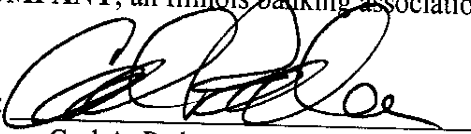
**INTEGRA BANK N.A.**



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**IN WITNESS WHEREOF**, Lender has caused these presents to be executed the day and year first above written.

**INTEGRA BANK, N.A.**, a national banking association, successor by merger to **PRAIRIE BANK AND TRUST COMPANY**, an Illinois banking association

By: 

Carl A. Pedersen  
Vice President

Property of Cook County Clerk's Office

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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK         )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ROBERT VOEGEL, as Manager of **BROADWAY 55, 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 as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27 day of July, 2007.



Dana Oberth  
NOTARY PUBLIC

My Commission Expires:  
9-1-09

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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that **ROBERT VOEGEL**, personally appeared before me this day and acknowledged to me that he signed and delivered the foregoing instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27 day of July, 2007.

*Dana Obert*

NOTARY PUBLIC

My Commission Expires:

9-1-09



Properly Cook County Clerk's Office

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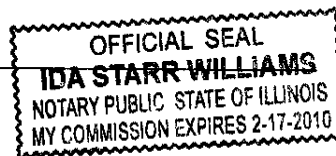
STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the State of Illinois, DO HEREBY CERTIFY that Sandra T. Russel, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer of **INTEGRA BANK, N.A., not personally, but as Successor Trustee**, whose name is subscribed to the foregoing instrument as Grantor, appeared before me this day in person and acknowledged that he signed and delivered this instrument as his free and voluntary act, and as the free and voluntary act of such Grantor, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 30<sup>th</sup> day of July, 2007.

Ida Starr Williams  
NOTARY PUBLIC

My Commission Expires:



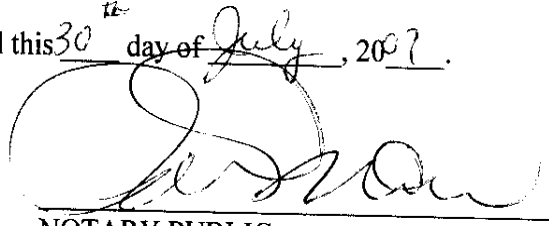
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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK         )

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that CARL A. PEDERSEN, personally known to me to be the Vice President of **INTEGRA BANK, N.A.**, a national banking association, personally 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 Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this <sup>th</sup> 30 day of July, 2007.

  
NOTARY PUBLIC

My Commission Expires:

02/26/09



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## EXHIBIT A

### LEGAL DESCRIPTION

Address: 5527-43 N. Broadway, Chicago, IL

PIN: 14-08-200-003-0000

14-08-200-004-0000

14-08-200-005-0000

LOT 6 (EXCEPT THE NORTH 12 1/2 FEET), LOTS 7, 8 AND THE NORTH 1/2 OF LOT 9 IN THE SUBDIVISION OF LOT 17 IN BLOCK 3 IN JOHN LEWIS COCHRAN'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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