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Doc#: 0816131017 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 06/09/2008 10:03 AM Pg: 1 of 10

CTC - 8323038

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 3rd day of June, 2008 by and among **4220 KILDARE LLC**, an Illinois limited liability company ("Borrower"), **GERALD LEE NUDO** and **JOHN M. DALEY** (collectively, "Guarantor") and **WACHOVIA BANK, NATIONAL ASSOCIATION**, as successor in interest to Wachovia Financial Services, Inc., its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore agreed to make a loan ("Loan") to Borrower in the principal amount of Twenty Million and 00/100 Dollars (\$20,000,000.00) pursuant to the terms and conditions of a Loan Agreement dated as of June 28, 2006 between Borrower and Lender (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated June 28, 2006 in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

**This document prepared by and
after recording return to:**

Scott M. Lapins, Esq.
Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

Address of Property:

4220 South Kildare
Chicago, Illinois

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B. The Loan is secured by an Open-End Mortgage and Security Agreement, Assignment and Financing Statement dated June 28, 2006 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on July 7, 2006 as Document No. 0618843187 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Absolute Assignment of Lessor's Interest in Leases and dated June 28, 2006 from Borrower to Lender and recorded in the Recorder's Office on July 7, 2006 as Document No. 0618843188 (the "Assignment of Leases"); and (iii) certain other loan documents (the Loan Agreement, Note, the Mortgage, the Assignment of Leases, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by: (i) an Unconditional Guaranty dated June 28, 2006 from Gerald Lee Nudo and John M. Daley to Lender (the "Guaranty").

D. Borrower desires to amend the Loan Documents in order to: (i) increase the principal amount of the Loan to \$25,000,000.00, (ii) revise the Loan Documents to secure the Promissory Note dated of even date herewith in the principal amount of \$5,000,000.00 made payable by Borrower to the order of Lender (the "\$5,000,000.00 Note"), and Lender is willing to make such modifications pursuant to the terms and conditions stated below.

AGREEMENTS

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Principal Amount of Loan.** All references in the Loan Documents to the principal amount of the Loan are hereby revised to refer to \$25,000,000.00 and each of the Loan Documents is hereby revised to secure the \$5,000,000.00 Note.

2. **Amendments to Loan Agreement.** The Loan Agreement is hereby modified to provide that the amount of the Loan is \$25,000,000.00 and that the \$5,000,000.00 Note will be advanced as part of the TI Reserve.

3. **Reaffirmation and Amendment of Guaranty.**

(a) The Guaranty is hereby amended to provide that the \$5,000,000.00 Note is included in the definition of the term "Guaranteed Obligations"

(b) Each Guarantor ratifies and affirms the Guaranty and agrees that except as expressly modified above, the terms of such Guaranty are in full force and effect. The representations and warranties of each Guarantor in the Guaranty are true and correct and no Guarantor knows of any default thereunder. The Guaranty continues to be the valid and binding obligations of each Guarantor, enforceable in accordance with its terms and

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no Guarantor has any claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in such Guaranty.

4. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

5. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's Title Insurance Policy No. 1401 008323038 (the "Title Policy"), as of the date this Agreement is recorded, reflecting: (i) the recording of this Agreement, (ii) the amount of insurance being \$25,000,000.00, and (iii) the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

6. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

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7. **Loan Fee.** As a condition to the effectiveness of this Agreement, Borrower shall pay to Lender an origination fee in the amount of \$25,000.00.

8. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which

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is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

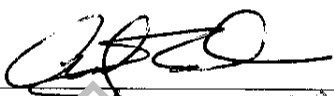
Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

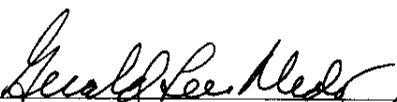
LENDER:

WACHOVIA BANK, NATIONAL ASSOCIATION

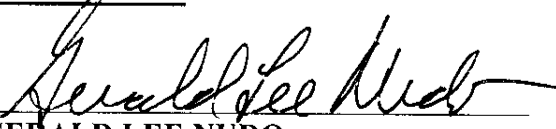
By: 
Name: Andrew J. Walker
Title: Vice President

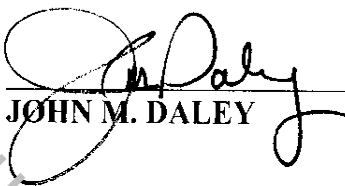
BORROWER:

4220 KILDARE LLC, an Illinois limited liability company

By: 
Name: GERALD LEE NUDO
Title: MANAGER

GUARANTOR:


GERALD LEE NUDO


JOHN M. DALEY

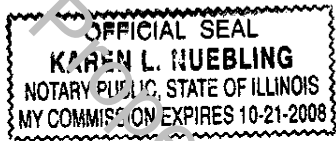
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STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I KAREN L. NUEBLING, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **GERALD LEE NUDO** 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 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 3rd day of June, 2008.



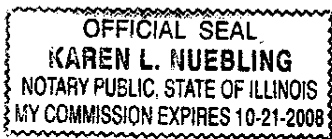
Karen L. Nuebling
Notary Public

My Commission Expires: 10/21/08

STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I KAREN L. NUEBLING, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **JOHN M. DALEY** 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 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 3rd day of June, 2008.



Karen L. Nuebling
Notary Public

My Commission Expires: 10/21/08

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EXHIBIT "A"

Description of Property
4220 South Kildare Boulevard
Chicago, Illinois

A TRACT OF LAND BEING A PART OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY OF DISTRICT BOULEVARD, AND THE WESTERLY RIGHT OF WAY OF KILDARE BOULEVARD, THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID WESTERLY RIGHT OF WAY, A DISTANCE OF 667.66 FEET TO THE NORTHERLY RIGHT OF WAY OF 44TH STREET; THENCE NORTH 89 DEGREES, 39 MINUTES, 35 SECONDS WEST, ALONG SAID NORTHERLY RIGHT OF WAY, A DISTANCE OF 1607.26 FEET TO THE WESTERLY LINE OF THE LANDS CONVEYED BY THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY TO THE CRAWFORD REAL ESTATE DEVELOPMENT COMPANY, PER DOCUMENT NUMBER 17307420; THENCE NORTH 10 DEGREES 12 MINUTES, 59 SECONDS WEST, ALONG SAID WESTERLY LINE, A DISTANCE OF 678.43 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF DISTRICT BOULEVARD; THENCE SOUTH 89 DEGREES, 40 MINUTES, 59 SECONDS EAST, ALONG SAID SOUTHERLY RIGHT OF WAY, A DISTANCE OF 24.41 FEET; THENCE SOUTH 10 DEGREES, 12 MINUTES, 59 SECONDS EAST A DISTANCE OF 132.76 FEET TO THE BEGINNING OF A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 309.62 FEET AND A CHORD BEARING SOUTH 35 DEGREES 17 MINUTES, 35 SECONDS EAST; THENCE SOUTHEASTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 59.17 FEET TO A POINT ON A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 302.00 FEET AND A CHORD BEARING SOUTH 54 DEGREES 57 MINUTES 01 SECONDS EAST; THENCE SOUTHEASTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 151.27 FEET; THENCE SOUTH 67 DEGREES, 59 MINUTES, 30 SECONDS EAST, A DISTANCE OF 49.29 FEET TO THE BEGINNING OF A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 310.00 FEET AND A CHORD BEARING 79 DEGREES 02 MINUTES 55 SECONDS EAST; THENCE SOUTHEASTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 111.83 FEET; THENCE SOUTH 89 DEGREES, 39 MINUTES, 35 SECONDS EAST A DISTANCE OF 93.50 FEET TO THE BEGINNING OF A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 556.00 FEET AND A CHORD BEARING NORTH 86 DEGREES, 43 MINUTES, 18 SECONDS EAST; THENCE NORTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 74.53 FEET; THENCE NORTH 81 DEGREES 42 MINUTES 03 SECONDS EAST A DISTANCE OF 70.83 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 287.37 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF DISTRICT BOULEVARD; THENCE SOUTH 89 DEGREES 40 MINUTES 59 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY A DISTANCE OF 1130.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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PARCEL IDENTIFYING NUMBERS:

19-03-101-009-0000
19-03-200-019-0000
19-03-400-091-0000
19-03-400-121-0000
19-03-400-151-0000
19-03-400-154-0000
19-03-400-189-0000
19-03-400-190-0000

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