

# UNOFFICIAL COPY



Doc#: 0824931032 Fee: \$48.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/05/2008 11:04 AM Pg: 1 of 7

## FIRST MODIFICATION TO LOAN DOCUMENTS

THIS First Modification to Loan Documents (the "Modification"), is dated effective this 18 day of August, 2008, by and between **GAS-MART USA, INC.**, a Missouri corporation, having an address of 16777 Barkley, Overland Park, Kansas 66211 ("Borrower"), and **SUN LIFE ASSURANCE COMPANY OF CANADA**, a Canadian corporation, with an address of One Sun Life Executive Park, Wellesley Hills, Massachusetts 02481, Attention Mortgage Investments Group ("Sun Life").

### WITNESSETH:

### RECITALS:

I. On March 22, 2007, Sun Life made a loan to Borrower (the "Loan") in the original principal amount of Forty-Two Million and No/100 Dollars (\$42,000,000.00). The Loan is secured 32 Gas-Mart USA properties located in Kansas, Illinois, Indiana, Iowa, Missouri, Nebraska, and Wisconsin, including those certain premises in Cook County, Illinois and known as 5149 West 70<sup>th</sup> Street (the "Burbank, Illinois Property") as more fully described on Exhibit A attached hereto and incorporated herein.

II. The Loan was evidenced by and reflected the following documents:

A. Promissory Note ("Note");

B. Mortgage and Security Agreement recorded on April 13, 2007, as Instrument No. 0710360071, in the Office of the Recorder of Cook County, Illinois (the "Mortgage"); and

C. Assignment of Leases and Rents recorded on April 13, 2007, as Instrument No. 0710360072, in the Office of the Recorder of Cook County, Illinois ("Assignment").

III. The foregoing documents, together with all documents executed in connection with the Loan, are collectively designated the "Loan Documents."

IV. Borrower and Lender (as herein defined below) have agreed to certain modifications to the Loan pursuant to the terms set forth herein.

First American Title Order # 260561  
HV 1021 DEC

First Modification to Loan Documents - Cook County, Illinois - Burbank  
Gas-Mart - First Modification to Loan Documents - Cook County, Illinois - Burbank (2).DOC

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NOW, THEREFORE, in consideration of the mutual promises and premises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. In conjunction herewith, Sun Life's affiliate, Sun Life Insurance and Annuity Company of New York, a New York corporation (together with Sun Life, collectively "Lender"), is making a loan to Borrower in the amount of One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00), secured by those certain premises known as 429 Veterans Memorial Highway, Council Bluffs, Pottawattamie County, Iowa (the "Collateral Loan"). The Collateral Loan is evidenced by a Promissory Note, an Mortgage and Security Agreement ("Second Mortgage"), an Assignment of Leases and Rents, and related documents all of even date herewith (collectively the "Collateral Loan Documents").

2. The parties intend that the Loan and the Collateral Loan be cross-defaulted and cross-collateralized.

3. All Loan Documents hereby are amended to provide that:

a. An Event of Default (as defined in the Loan Documents and the Collateral Loan Documents) under the Collateral Loan Documents shall be an Event of Default under the Loan Documents;

b. The Property, as defined in the Mortgage, shall also secure the Collateral Loan;

c. Section 1.20 of the Mortgage is hereby deleted in its entirety and replaced with the following:

*Loan Documents:* this Mortgage, those Deeds of Trust and Security Agreements securing the Additional Property, those certain Mortgage and Security Agreements and those certain Open-End Mortgage and Security Agreements securing the Additional Property, the Note, the Lease Assignment, those certain Lease Assignments securing the Additional Property, the Guaranty, and any and all other documents or instruments related thereto or to the Secured Debt now or hereafter given by or on behalf of Borrower and the Guarantor to or for the benefit of Lender including those certain loan documents dated August 28, 2008 pertaining to Lender's Loan No. 767176 in the amount of \$1,200,000.00 (the "Collateral Loan") secured by those certain premises known as 429 Veterans Memorial Highway, Council Bluffs, Pottawattamie County, Iowa (the "Collateral Property") and evidenced by that Mortgage and Security Agreement recorded in Pottawattamie County, Iowa on September 2, 2008 (the "Collateral Instrument") and all replacements.

d. Section 8.1(a) is hereby deleted in its entirety and replaced with the following:

*Breach of Named Covenants:* Any breach by Borrower of the covenants in Paragraph 4.1(a) (Secured Debt), Paragraph 4.1(b) (Property Taxes and Charges), Paragraph 4.2(f) (Clean-Up) or Paragraph 4.3 (Insurance) or the corresponding covenants

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in the paragraphs of the Collateral Instrument; provided, however, that a breach of the covenant in Paragraph 4.1(a) to pay the Secured Debt as and when due under any Note or other Loan Documents shall not constitute an Event of Default unless it shall continue for 5 days after the date such payment is due; provided further, however, that such 5-day grace period shall not apply more than twice in any one period of 12 consecutive months, the third such breach in such 12-month period constituting an Event of Default without expiration of any grace period.

4. The aggregate amount secured by the Mortgage and other Loan Documents together shall be up to \$43,200,000.00.

5. Except as specifically modified hereby, all terms and provisions of the Loan Documents remain in full force and effect.

6. This instrument may be executed in counterparts, all of which, when taken together, shall constitute a single instrument.

*[Remainder of Page Intentionally Left Blank]*



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IN WITNESS WHEREOF, Borrower has executed this instrument, as of the day and year first above written.

**BORROWER:**

**GAS-MART USA, INC.,**  
a Missouri corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ :  
: ss:  
COUNTY OF \_\_\_\_\_ :

Before me, a Notary Public in and for said state, personally appeared \_\_\_\_\_, Inc. \_\_\_\_\_ of Gas-Mart USA, Inc., a Missouri corporation, who acknowledged that he did execute the foregoing instrument for and on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunder subscribed my name and affixed my notarial seal on this \_\_\_\_\_ day of August, 2008.

\_\_\_\_\_  
Notary Public

**APPROVED:**

**LENDER:**

**SUN LIFE ASSURANCE COMPANY OF CANADA**, a Canadian corporation

By: \_\_\_\_\_  
Name: **ANDREW M. HUNT**  
Title: **SENIOR DIRECTOR**

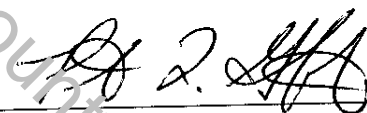
By: \_\_\_\_\_  
Name: **STEPHEN F. PIERANGELI**  
Title: **SENIOR DIRECTOR**

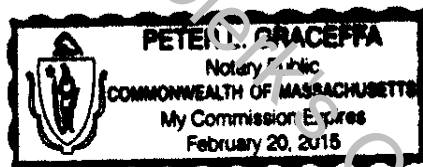
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COMMONWEALTH OF MASSACHUSETTS )  
 )SS.:  
 COUNTY OF NORFOLK )

BEFORE ME, a Notary Public in and for said County and Commonwealth,  
 personally appeared SUN LIFE ASSURANCE COMPANY OF CANADA, a Canadian  
 corporation with its principal place of business in the United States being One Sun Life  
 Executive Park, Norfolk County, Wellesley Hills, MA 02481, by Andrew M. Hunt, its  
Senior Director, and Stephen F. Pierangeli, its Senior Director, and who acknowledged  
 that he/she did sign the foregoing instrument for and behalf of said SUN LIFE  
 ASSURANCE COMPANY OF CANADA, and that the same is his/her free act and deed  
 individually and as such officer and the free act and deed of said SUN LIFE  
 ASSURANCE COMPANY OF CANADA.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at  
 Wellesley Hills, Norfolk County, Commonwealth of Massachusetts on August 18, 2008.

  
 \_\_\_\_\_  
 Notary Public  
 Commonwealth of Massachusetts



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Exhibit "A"

Store #41

LOTS 7, 8 AND 9 IN BLOCK 2 IN GOLFMoor, BEING A SUBDIVISION IN THE  
NORTHEAST 1/4 OF SECTION 33, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE  
THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Pin # 19 33 207 003  
19 33 207 019

5149 West 79th Street  
Burbank, IL

Property of Cook County Clerk's Office