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Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Doc#: 0835145067 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 12/18/2008 11:00 AM Pg: 1 of 10

The property identified as: PIN: 07-01-400-029-0000

Address:

Street: 387 Shuman Boulevard

Street line 2:

City: Naperville

State: IL

ZIP Code: 60563

Lender: M&I Marshall & Ilsley Bank

Borrower: SC Industrial VI, LLC

Loan / Mortgage Amount: \$7,785,000.00

This property is located within Cook County and the transaction is exempt from the requirements of 765 ILCS 7770 et seq. because the application was taken by an exempt entity.

Certificate number: B6B9FDA9-6CA9-4205-881E-448182DDEE72

Execution date: 11/18/2008

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Mail to:

M&I Marshall and Ilsley Bank  
 Attn: Collateral Department  
 401 North Executive Drive  
 Brookfield, WI 53005  
 (262) 938-8639

LOAN NO. XXXX1670-10000

**LOAN MODIFICATION AGREEMENT**

**THIS LOAN MODIFICATION AGREEMENT** (this "Agreement") is made effective as of November 18<sup>th</sup>, 2008, by and among **MC INDUSTRIAL VI, LLC**, an Illinois limited liability company, having an address at 900 Oakmont Lane, Suite 207, Westmont, Illinois 60559 ("Borrower"), **DOUGLAS A. DOLLIFF**, individually, and **DAVID M. HARVEY**, individually (hereinafter collectively referred to as "Guarantors") and **M&I MARSHALL AND ILSLEY BANK**, its successors and assigns ("M&I" or "Lender").

**RECITALS:**

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of **SEVEN MILLION SEVEN HUNDRED EIGHTY FIVE THOUSAND AND NO/100THS DOLLARS (\$7,785,000.00)** as evidenced by a Promissory Note dated October 2, 2008, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, (i) that certain Mortgage from Borrower to lender dated October 2, 2008, and recorded against certain real property commonly known as 387 Shuman Boulevard, Naperville, Illinois 60563 (the "Property") and recorded in the Office of the DuPage County Recorder of Deeds on October 3, 2008, as document number R2008-148889 (the "Mortgage"), (ii) that certain Assignment of Leases and Rents from Borrower to Lender dated October 2, 2008, recorded against the Property in the Office of the DuPage County Recorder of Deeds on October 3, 2008, as document number R2008 - 148890 (the "Assignment of Rents"), and (iii) that certain Guaranty from the Guarantors to Lender dated October 2, 2008 (the "Guaranty"), and (iv) that certain UCC Financing Statement filed with the Illinois Secretary of State's Office (the Mortgage, the Assignment of Rents, the Guaranty, and the UCC Financing Statement and any other document evidencing, securing and guarantying the Loan, in their original form, are sometimes collectively referred to herein as the "Loan Documents").

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C. Borrower and Lender now desire to amend the Loan Documents in order to: allow the Borrower to enter into Rate Management Transactions, as defined herein, with the Lender regarding the interest rate payable under the Note.

## 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. **Modification of Mortgage:** The Mortgage shall be modified to include the following language:

**"Rate Management Obligations"** shall mean any and all debts, obligation and liabilities of a Person, whether absolute or contingent and howsoever and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (i) any and all Rate Management Transactions, and (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Rate Management Transactions.

**"Rate Management Transaction"** shall mean any transaction (including an agreement with respect thereto) now existing or hereafter entered into between Borrower and M&I or any Lender, or any Affiliate thereof, which is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures.

**"Obligations"** means all now existing or hereafter arising loans, advances, liabilities, debts, obligations, Rate Management Obligations, covenants and duties of payment or performance of every kind, matured or unmatured, direct or contingent, owing, arising, due or to become due, or payable to Lender or M&I, by or from Borrower, in each case to the extent arising out of this Agreement, and Rate Management Transactions or any other Loan Document or otherwise including, without limitation, all obligations to repay principal of and interest on the Note, and all obligations to pay interest, fees, costs, charges, expenses and any other sums chargeable to Borrower under this Agreement, the Loan Documents or any Rate Management Transaction.

2. **Loan Amount.** The Loan Amount shall remain the same as set forth in the Note.

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3. **Interest Rate.** The interest rate shall remain as set forth in the Note or as subsequently modified by any Rate Management Transaction entered into by Borrower and Lender.

4. **Amendment of Note.** The Note is specifically amended to include the following:

M&I” means M&I Marshall & Ilsley Bank, a Wisconsin banking corporation.

“**Rate Management Obligations**” shall mean any and all debts, obligations and liabilities of a Person, whether absolute or contingent and howsoever and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (i) any and all Rate Management Transactions, and (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Rate Management Transactions.

“**Rate Management Transaction**” shall mean any transaction (including an agreement with respect thereto) now existing or hereafter entered into between Borrower and M&I or any Lender, or any Affiliate thereof, which is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures.

“**Obligations**” means all now existing or hereafter arising loans, advances, liabilities, debts, obligations, Rate Management Obligations, covenants and duties of payment or performance of every kind, matured or unmatured, direct or contingent, owing, arising, due or to become due, or payable to Lender or M&I, by or from Borrower, in each case to the extent arising out of this Agreement, and Rate Management Transactions or any other Loan Document or otherwise including, without limitation, all obligations to repay principal of and interest on the Note, and all obligations to pay interest, fees, costs, charges, expenses and any other sum chargeable to Borrower under this Agreement, the Loan Documents or any Rate Management Transaction. Unless specifically amended herein, all other terms of the Note shall remain in full force and effect.

5. **Consistent Changes.** The Loan Documents are hereby amended wherever necessary to reflect the changes described above.

6. **Representations and Warranties of Borrower and Guarantors.** Borrower and Guarantors hereby represent, covenant and warrant to Lender as follows:

(a) Except for the additional encumbrance on the Property and rights of tenants under unrecorded tenant leases approved by Lender, the representations and warranties in the Loan Documents are true and correct as of the date hereof.

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(b) There is currently no Event of Default (as defined in the Note) under the Loan Documents and Borrower and Guarantors know of no event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the 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 and Guarantors 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, Guarantors, 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 and Guarantors have no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) 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 and Guarantors. This Agreement has been duly executed and delivered on behalf of Borrower.

## 7. 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 Guarantors merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantors and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantors and Lender each acknowledge and waive 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

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with Borrower or Guarantors nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantors 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, Guarantors 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" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note 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 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 Borrower's and Guarantors' obligations under this Agreement.

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK)

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

**BORROWER:**

SC INDUSTRIAL VI, LLC, an Illinois limited liability company

By: Its Manager

STONE CREEK SHUMAN MANAGER, LLC, an Illinois limited liability company

By: *David M. Harvey*  
DAVID M. HARVEY, its Member

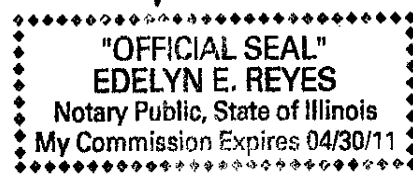
**LENDER:**

M&I MARSHALL AND ILSLEY BANK, a Wisconsin banking corporation

By: *Judy By*

Its: *SVP*

*Edelyn E. Reyes*



**GUARANTORS:**

*David M. Harvey*  
DAVID M. HARVEY, individually

*Douglas A. Dolliff*  
DOUGLAS A. DOLLIFF, individually



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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF DuPage )

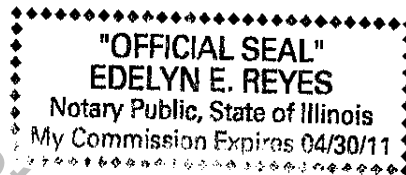
I, Edelyn Reyes, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that DAVID M. HARVEY, individually and as the Member of STONE CREEK SHUMAN MANAGER, LLC, an Illinois limited liability company, as the Manager of SC INDUSTRIAL VI, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such member, 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 in his capacity as the Member of STONE CREEK SHUMAN MANAGER, LLC, an Illinois limited liability company, as the Manager of SC INDUSTRIAL VI, LLC, an Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18<sup>th</sup> day of November, 2008.

Edelyn E. Reyes  
Notary Public

My Commission Expires:

April 30, 2011



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, Benjamin Krsnak, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that DOUGLAS A. DOLLIFF, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such member, 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 18 day of November, 2008

Benjamin Krsnak  
Notary Public

My Commission Expires:

January 31, 2012





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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 15 IN NAPERVILLE OFFICE PARK ASSESSMENT PLAT NO. 3, BEING A RESUBDIVISION OF PART OF LOT 14 IN NAPERVILLE OFFICE PARK ASSESSMENT PLAT NO. 2, BEING A RESUBDIVISION OF LOT 1 IN NAPERVILLE OFFICE PARK ASSESSMENT PLAT NO. 1, BEING A SUBDIVISION OF PART OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 11, 1980 AS DOCUMENT R80-77214, IN DUPAGE COUNTY, ILLINOIS.

AND ALSO DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF ALEXIS R. SHUMAN BOULEVARD, DEDICATED FOR PUBLIC STREET, ACCORDING TO THE PLAT OF DEDICATION RECORDED AS DOCUMENT NO. R77-77976, SAID POINT BEING ON THE EASTERLY LINE OF A 100 FOOT WIDE STRIP OF LAND (AS MONUMENTED AND OCCUPIED) (MILL STREET) CONVEYED TO THE COUNTY OF DUPAGE PER DOCUMENT NOS. R73-30145 AND R73-68244, THENCE NORTHWESTERLY ALONG SAID EASTERLY LINE OF THE FOLLOWING THREE CURVES, COURSE AND DISTANCE: (1) NORTHWESTERLY ALONG AN ARC OF A CIRCLE, CONVEX TO THE NORTHEAST HAVING A RADIUS OF 1004.93 FEET, THE CHORD THEREOF HAVING A BEARING OF NORTH 41 DEGREES 46 MINUTES 33 SECONDS WEST, AND A LENGTH OF 80.70 FEET, AN ARC DISTANCE OF 80.72 FEET TO A POINT OF TANGENCY; (2) THENCE NORTH 44 DEGREES 04 MINUTES 37 SECONDS WEST, A DISTANCE OF 165.45 FEET TO A POINT OF CURVATURE; (3) THENCE NORTHWESTERLY ALONG AN ARC OF A CIRCLE, CONVEX TO THE SOUTHWEST, HAVING A RADIUS OF 904.97 FEET, THE CHORD THEREOF HAVING A BEARING OF NORTH 41 DEGREES 19 MINUTES 37 SECONDS WEST AND A LENGTH OF 86.83 FEET, AN ARC DISTANCE OF 86.87 FEET TO THE POINT OF BEGINNING; THENCE NORTH 51 DEGREES 25 MINUTES 25 SECONDS EAST, A DISTANCE OF 95 FEET; THENCE SOUTH 60 DEGREES 06 MINUTES 26 SECONDS EAST, A DISTANCE OF 175.08 FEET; THENCE NORTH 87 DEGREES 36 MINUTES 20 SECONDS EAST, A DISTANCE OF 120 FEET; THENCE SOUTH 29 DEGREES 23 MINUTES 40 SECONDS EAST, A DISTANCE OF 112 FEET, MORE OR LESS, TO A POINT ON THE NORTHERLY LINE OF ALEXIS R. SHUMAN BOULEVARD, AFORESAID, SAID POINT BEING 67.68 FEET ARC DISTANCE EASTERLY FROM A POINT OF CURVATURE ON SAID NORTHERLY LINE OF SAID BOULEVARD; THENCE NORTHEASTERLY ALONG SAID NORTHERLY LINE OF SAID BOULEVARD, BEING ALONG AN ARC OF A CIRCLE, CONVEX TO THE NORTHWEST, HAVING A RADIUS OF 554 FEET, THE CHORD THEREOF HAVING A BEARING OF NORTH 67 DEGREES 01 MINUTES 04 SECONDS EAST, AND A LENGTH OF 123.74 FEET, AN ARC DISTANCE OF 124 FEET; THENCE NORTH 16 DEGREES 34 MINUTES 12 SECONDS WEST, A DISTANCE OF 197.31 FEET; THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 483.76 FEET, MORE OR LESS, TO A POINT ON THE SOUTH LINE OF LOT 14 IN THE NORTHERN ILLINOIS GAS COMPANY NAPERVILLE TOWNSHIP ASSESSMENT PLAT NO. 1 AS

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RECORDED AS DOCUMENT NO. 938353 AND SHOWN ON PLAT RECORDED AS DOCUMENT NO. R64-27940, SAID POINT BEING 706.16 FEET NORTH 89 DEGREES 46 MINUTES 03 SECONDS EAST, FROM THE INTERSECTION OF THE CENTERLINE OF WEST STREET WITH THE SOUTH LINE OF LOTS 13 AND 14 IN SAID NORTHERN ILLINOIS GAS COMPANY NAPERVILLE TOWNSHIP ASSESSMENT PLAT NO. 1; THENCE SOUTH 89 DEGREES 46 MINUTES 03 SECONDS WEST ALONG SAID SOUTH LINES OF LOTS 13 AND 14, A DISTANCE OF 706.16 FEET TO THE CENTERLINE OF WEST STREET; THENCE SOUTH 0 DEGREES 10 MINUTES 40 SECONDS EAST, ALONG SAID CENTERLINE OF WEST STREET, A DISTANCE OF 169.20 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF A TRACT OF LAND CONVEYED PER DOCUMENT NO. R67-11347; THENCE NORTH 88 DEGREES 50 MINUTES 35 SECONDS EAST, ALONG THE NORTH LINE OF TRACT CONVEYED PER DOCUMENT R67-11347, A DISTANCE OF 59.65 FEET, MORE OR LESS, TO THE EASTERLY LINE OF MILL STREET AFORESAID; THENCE SOUTHEASTERLY ALONG SAID EASTERLY LINE OF MILL STREET, BEING ALONG AN ARC OF A CIRCLE, CONVEX TO THE SOUTHWEST HAVING A RADIUS OF 904.93 FEET, THE CHORD THEREOF HAVING A BEARING OF SOUTH 23 DEGREES 33 MINUTES 48 SECONDS EAST AND A LENGTH OF 468.84 FEET, AN ARC DISTANCE OF 474.25 FEET,

MORE OR LESS, TO THE POINT OF BEGINNING, EXCEPTING THEREFROM THAT PART OF THE ABOVE DESCRIBED PROPERTY DEDICATED TO THE CITY OF NAPERVILLE FOR HIGHWAY PURPOSES BY PLAT OF DEDICATION RECORDED AUGUST 20, 1968 IN BOOK 55, PAGE 59 AS DOCUMENT NO. R68-37892 AND CONVEYED TO THE COUNTY OF DUPAGE BY DEED RECORDED MAY 25, 1973 AS DOCUMENT NO. R73-30145, ALL IN DUPAGE COUNTY, ILLINOIS.

Permanent Index Numbers: 07-01-400-029

Commonly known as: 387 SHUMAN BOULEVARD, NAPERVILLE, ILLINOIS 60563