

# UNOFFICIAL COPY

Prepared by and  
When recorded, mail to:  
Stephen R. Miller, Esq.  
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10 S. Wacker Drive, Suite 4000  
Chicago, IL 60606



Doc#: 0932433003 Fee: \$64.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
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## SECOND LOAN MODIFICATION AGREEMENT

THIS SECOND LOAN MODIFICATION AGREEMENT (this "Second Modification") is dated for reference purposes and effective as of the Second Modification Effective Date (defined on the signature page of this Second Modification), by Division State LLC ("Beneficiary") an Illinois limited liability company as successor to Chebemma and ATG Trust Company as successor to The Northern Trust Company not personally but as Trustee under Trust No. 10140 dated July 1, 2004 ("Land Trust") together with Beneficiary ("Borrower"), Mark Hunt ("Guarantor") and National City Bank f/k/a National City Bank of the Midwest ("Lender").

### RECITALS:

A. Borrower and Lender entered into a Construction Loan Agreement ("Construction Loan Agreement") dated as of August 11, 2004, and a Real Estate Mortgage dated August 11, 2004, and recorded on August 19, 2004, as document number 0423239052. Pursuant to the Construction Loan Agreement, Lender agreed to make a loan to Borrower in the maximum amount of \$7,100,000 (the "Loan"). In connection with the Loan, Borrower executed and delivered to Lender a Commercial Note dated August 11, 2004 and Mark Hunt executed and delivered to Lender a Payment, Performance and Completion Guaranty and Environmental Indemnity. The documents were amended by an Amendment No. 1 to Loan Agreement dated as of August 10, 2006, and recorded on January 10, 2007, as document number 0701033126, and an Amendment No. 2, Assignment and Assumption of Loan Agreement, Real Estate Mortgage, Assignment of Rents and Leases and Note dated as of June 8, 2007, and recorded on October 17, 2007, as document number 0729033014, a Loan Modification Agreement dated March 12, 2008 and an Amendment No. 3 Assignment and Assumption of Loan Agreement, Real Estate Mortgage Assignment of Rents and Leases and Note dated November 5, 2008 and recorded as Document 0831022054. The above documents and all other documents, instruments and agreements given to Lender from time to time in connection with or to secure the Loan as well as all amendments and modifications as well as any other items which fall within the definition of Loan Documents under the Construction Loan Agreement are referred to as Loan Documents.

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B. At the request of Borrower, Borrower and Lender have agreed to amend the Construction Loan Agreement and the other Loan Documents for among other things to: (1) provide for a full repayment guaranty by Mark Hunt; (2) adjust the interest rate; and (3) address certain issues with regard to leases.

NOW THEREFORE, in consideration of the foregoing Recitals, each of which is made a contractual part hereof, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and accepted, Borrower and Lender hereby agree as follows:

## 1. INCORPORATION.

(a) Recital Representations. Borrower hereby represents and warrants to Lender that the foregoing Recitals are: (a) true and accurate in all material respects; and (b) an integral part of this Second Modification. Borrower and Lender hereby agree that all of the Recitals of this Second Modification are hereby incorporated into this Second Modification and made a part hereof.

(b) Incorporation of Definitions. Any capitalized terms not otherwise defined herein shall have the meanings set forth in the Construction Loan Agreement.

## 2. AMENDMENTS TO CONSTRUCTION LOAN AGREEMENT.

2.1. Future Availability and Loan Balance. Borrower and Lender acknowledge and agree that Lender has no further obligations to advance or disburse funds under the Loan and the Loan has been fully funded and there is no undisbursed availability under the loan or any commitment. Lender and Borrower agree that as of September 10, 2009 the outstanding principal balance on the Note is \$7,043,226.55.

2.2. Fee. Upon execution of this Second Modification, Borrower will pay Lender a fee equal to \$14,086 which fee is fully earned and non-refundable.

### 2.3. Interest Rate Modification.

Section 5 of the Commercial Note is amended to read as follows:

"The unpaid principal balance of each Subject Loan shall at all times bear interest at the Contract Rate. The "**Contract Rate**" shall at all times be a fluctuating rate equal to three hundred and fifty basis points (3.50%) per annum plus 30-Day LIBOR; provided that in the event 30-Day LIBOR is unavailable as a result of Bank's good faith determination of the occurrence of one of the events specified in Section 6, the "**Contract Rate**" shall be a fluctuating rate equal to the Prime Rate.

Upon the occurrence of the earlier of (a) May 31, 2010, or (b) an Event of Default (other than the Defaults specifically addressed as Existing Defaults in Letter Agreement dated the Second Modification Effective Date between Lender and Borrower), interest on the unpaid principal balance of the Loan and all other indebtedness and liabilities of Borrower to Lender shall be charged at a rate equal to four percent (4%) plus the Contract Rate (the "**Default Rate**"), increased from time to time as a result of increases in the Contract Rate.

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**Interest Payments.** Commencing on the 1<sup>st</sup> day of the month following the Second Modification Effective Date, and on the first day of each month during the term hereof (including any extension period), Borrower promises to pay to the order of Lender interest on the then outstanding principal balance of the Loan computed using the Contract Rate or the Default Rate (if applicable) then in effect, monthly in arrears. Interest payments calculated in accordance with this paragraph shall be due and payable on the first (1<sup>st</sup>) day of each month, without notice, demand or offset.

**Principal Payments.** Heavenly Massage of Division, Inc. ("**Heavenly Massage**") has entered into a lease dated June 8, 2006 (the "**Heavenly Lease**"). In addition to monthly interest payments, and not in lieu thereof, commencing on the date of the first rental payment by Heavenly Massage, and on the first day of each month thereafter during the term hereof (including any extension period), Borrower promises to pay to the order of Lender an amount equal to ten thousand (\$10,000) dollars.

Borrower promises to pay to the order of Lender the unpaid principal balance, all accrued but unpaid interest on the Loan, and all other Secured Obligations if not sooner paid or payable by acceleration or otherwise, on the Maturity Date, without notice, demand or offset.

The 30-Day LIBOR rate shall be adjusted by Bank, as necessary, at the end of each Banking Day during the term hereof. Bank shall not be required to notify Borrower of any adjustment in the 30-Day LIBOR rate; provided that, Borrower may request a quote of the prevailing Contract Rate on any Banking Day."

**2.4. Heavenly Massage.** The Heavenly Lease requires Borrower to provide a construction allowance to Heavenly Massage of Four hundred thousand Dollars (\$400,000) for Heavenly Massage to build out ("**Heavenly Build-out**") the space it is leasing ("**Heavenly Space**"). The Heavenly Space consists of approximately 15,079 square feet. Heavenly Massage is responsible for the build out of the Heavenly Space. Prior to allowing Heavenly Massage to commence work or any work to commence on the Heavenly Space, Borrower will require Heavenly Massage to present it with a complete detailed budget ("**Heavenly Budget**") which includes all hard and soft costs to complete the Heavenly Build-out and Borrower will deposit \$400,000 in escrow with Chicago Title to fund such work. \$300,000 of the \$400,000 will be deposited by Borrower with Chicago Title on the date of execution of this Second Modification and an additional \$100,000 as provided in paragraph 2.5. If the Heavenly Budget shows costs in excess of \$400,000 or the costs exceed \$400,000 at anytime, Borrower will require Heavenly Massage to fund into escrow any amounts in excess of the \$400,000 allowance. Prior to commencement of the Heavenly Build-out, Borrower will present Lender with a copy of the Heavenly Budget and confirmation that any amounts in excess of \$400,000 have been funded into escrow with Chicago Title. Lender assumes no responsibility for the budget and Lender has no obligation to fund any portion of the Heavenly Build-Out. In connection with each disbursement, Borrower will require Heavenly Massage to present (a) application for payment and sworn statements from Heavenly Massage, its general contractors and all subcontractors covering all work for which disbursements are to be made, (b) Contractors and subcontractors waivers of liens and all other statements and forms required for compliance with mechanics lien laws of Illinois together with all invoices, contracts or other supporting data as Chicago Title may require, and (c)

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confirmation that the remaining funds in escrow are sufficient to complete the Heavenly Build-Out.

**2.5. Guaranty.** Mark Hunt agrees that paragraph 18 of the Payment, Performance and Completion Guaranty and Environmental Indemnity is deleted. Concurrent with the execution of this Agreement, Mark Hunt will enter into an Amended and Restated Payment, Performance and Completion Guaranty and Environmental Indemnity in a form acceptable to Lender. Mark Hunt agrees to fund \$100,000 of the \$400,000 provided for in paragraph 2.4 in increments of \$25,000 per month with the first payment being made upon execution of this Agreement. Borrower may transfer \$21,798.05 from an existing construction escrow at Chicago Title as partial payment of the initial \$25,000. Lender agrees to consent to the transfer of \$21,798.05.

**2.6. Additional Remedies under Loan Documents.** Lender is hereby expressly authorized and empowered, at and following the occurrence of any Event of Default or default, to enter into and upon and take possession of the Property or any part thereof, to collect Rents to complete any construction or repairs of the Property at the expense of Borrower, to lease the same, to sue for or otherwise collect and receive all Rents, or any part thereof, including, without limitation, those past due and unpaid, and to apply the same, less the necessary or appropriate expenses of collection thereof, either for the care, operation and preservation of the Property or, at the election of Lender in its sole discretion, to a reduction of the Indebtedness (as defined in the "**Mortgage**") owed Lender in such order as Lender may, in its sole discretion elect. In furtherance of this right, Lender may require any tenant or other user of this Property to make payments of rent directly to Lender. Borrower irrevocably designates Lender as its attorney-in-fact to endorse instruments received in payment in the name of Borrower and to negotiate the same and collect the proceeds. Lender, in addition to the rights provided under the Note, Mortgage and any of the other Loan Documents, is also hereby granted full and complete authority to enter upon the Property, employ watchmen to protect the Equipment and Improvements from depredation or injury and to preserve and protect the Collateral, and to continue any and all outstanding contracts for the erection, completion or repair of improvements to the Property, to make and enter into any contracts and obligations wherever necessary in its own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of Borrower. All such expenditures by Lender shall be Loan Expenses and paid by Borrower. Rents means all present and future rents, revenues, income, issues, royalties, profits, proceeds and other benefits derived from the Property. To the extent permitted by law, Lender shall have the right to be placed as mortgagee in possession or to have a receiver appointed to take possession of all or any part of the Property. The mortgagee in possession may serve without bond.

**2.7. Foreclosure; Receiver.**

**2.7.1** Upon the occurrence of any default or Event of Default, Lender shall have the right immediately or at any time thereafter to foreclose the lien of the Mortgage.

**2.7.2** Upon the filing of any complaint for foreclosure, the court in which such complaint is filed may, upon application of Lender, in Lender's sole and absolute discretion, appoint Lender as a mortgagee-in-possession or appoint a receiver of the Property pursuant to the Illinois Mortgage Foreclosure Law, as amended (Illinois Code Ann. 735 ILCS 5/15-1001, et seq.) (the "**Mortgage Foreclosure Act**"). Such appointment may be made either before or after sale,

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without choice; without regard to the solvency or insolvency, at the time of application for each receiver, of the person or persons, if any, liable for the payment of the Indebtedness; without regard to the value of the Property at such time; without bond being required of the applicant; and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Mortgage Foreclosure Act, including the power to take possession, control and care of the Property and to collect all Rents (including, but not limited to, any delinquent Rents), issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Indebtedness, and in the event of a sale and a deficiency where Borrower has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Borrower or its devisees, legatees, administrators, legal representatives, successors or assigns except for the intervention of such receiver, would be entitled to collect such Rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Property during the whole of any such period. To the extent permitted by law, such receiver may take any action permitted to be taken by Lender pursuant to any other Loan Document, extend or modify any then existing leases and make new leases of the Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser or at any time thereafter.

**2.7.3** The court may, from time to time, authorize said receiver to apply the net amounts remaining in his hands, after deducting reasonable compensation for the receiver and his counsel as allowed by the court, in payment (in whole or in part) of any or all of the Indebtedness, including without limitation the following, in such order of application as Lender may, in its sole and absolute discretion, elect: (i) amounts due upon the Note, (ii) amounts due upon any decree entered in any suit foreclosing the Mortgage, (iii) actual, reasonable out-of-pocket costs and expenses of foreclosure and litigation upon the Property, (iv) insurance premiums, repairs, impositions, water charges and interest, penalties and costs, in connection with the Property, (v) any other lien or charge upon the Property that may be or become superior to the lien of the Mortgage, or of any decree foreclosing the same and (vi) all costs incurred and monies advanced by Lender to cure or attempt to cure any default by Borrower in the performance of any obligation or condition contained in any of the Loan Documents including Mortgage or otherwise, to protect the security provided in the Mortgage, or in any of the other Loan Documents, with interest on such sums advanced at the Default Rate. The excess of the proceeds of sale, if any, shall then be paid to Borrower.

**2.7.4** The Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Property, as Lender may elect, until all of the Property has been foreclosed against and sold. As part of the foreclosure, Lender in its sole discretion may, with or without entry, personally or by attorney, sell to the highest bidder all or any part of the Property, and all right,

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title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, as Lender may elect, and in one sale or in any number of separate sales held at one time or at any number of times, all in any manner and upon such notice as provided by applicable law. Upon the completion of any such sale or sales, Lender shall transfer and deliver, or cause to be transferred and delivered, to the purchaser or purchasers of the property so sold, in the manner and form as provided by applicable law, and Lender is hereby irrevocably appointed the true and lawful attorney-in-fact of Borrower, in its name and stead, to make all necessary transfers of property thus sold, and for that purpose Lender may execute and deliver, for and in the name of Borrower, all necessary instruments of assignment and transfer, Borrower hereby ratifying and confirming all that said attorney-in-fact shall lawfully do by virtue hereof.

**2.7.5** In the case of any sale of the Property pursuant to any judgment or decree of any court at public auction or otherwise, Lender may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Note and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt. In case of any foreclosure of the Mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by Lender for the enforcement, protection or collection of its security interest, including court costs, attorneys' fees, stenographers' fees, costs of advertising, and costs of title insurance and any other documentary evidence of title, shall be paid by Borrower.

**2.7.6** The exercise of Lender's rights hereunder which include without limitation, the taking of possession by Lender as a mortgagee-in-possession, the appointment of a receiver, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event of Default or default or waive, modify or affect notice of default hereunder or invalidate any act done pursuant to said notice, nor in any way operate to prevent Lender from pursuing any remedy which now or hereafter it may have under the terms and conditions of the Mortgage or, the other Loan Documents or any other instruments securing the same. The rights and powers of Lender hereunder shall remain in full force and effect both prior to and after any foreclosure of the Mortgage and any sale pursuant thereto and until expiration of the period of redemption for said sale. The purchaser at any foreclosure sale, including Lender, shall have the right at any time and without limitation, to advance money to any receiver appointed of the Property to pay any part or all of the items which the receiver would otherwise be authorized to pay if cash were available from the Property and the sum so advanced, with interest at the Default Rate, shall be a part of the sum required to be paid to redeem from any foreclosure sale.

Lender may take any of the actions referred to in Section 2.6 or 2.7 irrespective of and without regard to the adequacy of the security for the Indebtedness.

**2.7.7 All Remedies.** It is the intention of the parties that the Mortgage shall confer upon Lender the fullest rights, remedies and benefits available under applicable law.

### **3. COVENANTS, REPRESENTATIONS, AND CONDITIONS.**

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**3.1. Remake Representations.** Except as expressly amended or modified herein, as of the Second Modification Effective Date, Borrower hereby remakes and ratifies all of the representations and warranties of Borrower set forth in the Construction Loan Agreement and each of the Loan Documents, as amended hereby, to which Borrower is a party. Borrower hereby represents and warrants that all such representations and warranties are true and correct as of the date made and to the extent it is a continuing representation or warranty, as of the Second Modification Effective Date hereof.

**3.2. Conditions to Effectiveness.** It shall be a condition precedent to the effectiveness of this Second Modification that Borrower shall have delivered and/or performed all of the items listed on the Checklist delivered by Lender to Borrower concurrently herewith.

## 4. EFFECT OF AMENDMENT.

**4.1. Amendment Supplementary.** Except as expressly amended hereby, the Construction Loan Agreement and all other Loan Documents shall remain in full force and effect, unamended hereby. The Construction Loan Agreement, all amendments and restatements thereto and thereof, and this Amendment shall be read, taken and construed as one and the same instrument and shall be referenced to as the "**Construction Loan Agreement**". On and after the Second Modification Effective Date, the term "**Loan Agreement**", "**Construction Loan Agreement**" or the "**Agreement**" as used in the Construction Loan Agreement, this Second Modification, and all other references to the Construction Loan Agreement shall mean the Construction Loan Agreement as amended hereby. From and after the date hereof, all references to the "**Loan Documents**" in this Agreement and each other Loan Document, shall mean the Loan Documents as amended hereby or concurrently herewith.

**4.2. Reaffirmation of Liability.** Borrower hereby ratifies and confirms its liabilities, obligations and agreements under the Loan Agreement and the other Loan Documents, including without limitation the obligation to pay principal and interest and all other indebtedness, obligations and liabilities in accordance with the provisions thereof.

**4.3. Security Interest.** Borrower hereby reaffirms and acknowledges that Borrower previously granted to Lender and hereby reaffirms, remakes and grants to Lender a mortgage lien and security interest in all assets of Borrower (real, personal and intangible) and hereby further reaffirms Borrower's previous grant to Lender of a security interest in all property of Borrower, including without limitation, all Leases and the proceeds therefrom, and all Accounts, Chattel Paper, Commercial Tort Claims, Commodity Accounts, Deposit Accounts, Documents, Equipment, Fixtures, General Intangibles, Inventory, Instruments, Investment Property, Letter-of-Credit Rights, Payment Intangibles, Promissory Notes, Securities Accounts, Supporting Obligations (each as defined in the Uniform Commercial Code as enacted in the State of Illinois) and all products and Proceeds thereof and Accessions thereto, all whether now existing or hereafter arising or acquired, wherever located. Without limiting the generality of the foregoing, the Note, the Loan Agreement, all extensions, renewals, modifications and refinancings thereof, and all present and future debts, obligations and liabilities of Borrower, have been, are and shall continue to be secured by the Mortgage, the Security Agreement and the other Loan Documents.

**4.4. No Discharge.** Without limiting the generality of the foregoing, all of the provisions of the Loan Documents, including without limitation the right to declare principal and accrued interest due for any cause specified in the Loan Documents, shall

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remain in full force and effect, and such provisions are hereby reaffirmed, ratified and confirmed in their entirety and incorporated by reference as if fully set forth herein. This Second Modification shall not release, discharge or satisfy any present or future debts, obligations or liabilities to Lender of Borrower, or any other debtor, guarantor or other Person or entity liable for payment or performance of any of such debts, obligations or liabilities of Borrower, or any mortgage, security interest, lien or other collateral or security for any of such debts, obligations or liabilities of Borrower, or such debtors, guarantors, or other persons or entities, or waive any default. Lender expressly reserves all of its rights and remedies with respect to Borrower, and all such debtors, guarantors or other Persons, and all such mortgages, security interests, liens and other collateral and security.

**4.5. No Waiver.** Nothing contained in this Second Modification shall be deemed: (i) to be a waiver of any Event of Default under any Loan Document; or (ii) to be an agreement to forbear the exercise of any right or remedy under any Loan Document; or (iii) to establish any course of conduct relating to the forbearance of any Event of Default that has occurred, all such rights and remedies being and shall continue to be in full force and effect, and shall not be amended by this Second Modification. Failure by Lender to insist upon full and prompt performance of any provisions of the Loan Documents, or to take action in the event of any breach of any such provision or Event of Default, shall not constitute a waiver of any rights of Lender. Lender may, at any time thereafter, exercise any right or remedy provided in any Loan Document. Borrower hereby expressly waives any right to assert that it detrimentally relied upon such continued waiver or that Lender acted in bad faith in insisting upon strict compliance by Borrower with the provisions of any Loan Document or in exercising any right or remedy expressly granted to Lender hereunder or under the other Loan Documents.

## 5. WAIVER AND RELEASE.

**5.1. Waiver of Claims.** Borrower hereby acknowledges, agrees and affirms that, as of the Second Modification Effective Date, it possesses no claims, defenses, offsets, recoupment or counterclaims of any kind or nature against Lender or with respect to the enforcement of this Second Modification, the Construction Loan Agreement, or any other Loan Document or any amendments thereto or relating in any manner whatsoever to the Loan Documents or Lender's obligations, liabilities or performance thereunder, including without limitation the exercise or failure to exercise any right or remedy thereunder (collectively, the "Claims"), nor does Borrower now have knowledge of any facts that would or might give rise to any Claims.

**5.2. Release of Lender.** Borrower hereby waives, releases, remits and forever discharges Lender, each of its Affiliates, and each of the officers, directors, employees, and agents of Lender and its Affiliates (collectively, the "Released Parties"), from any and all claims, suits, investigations, proceedings, demands, obligations, liabilities, causes of action, damages, losses, costs and expenses, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law of any kind or character, known or unknown, past or present, liquidated or unliquidated, suspected or unsuspected, which Borrower ever had from the beginning of the world, or now has against any such Released Party which relates, directly or indirectly to the Loan Agreement, any other Loan Document, or to any acts or omissions of any such Released Party under, in connection with, pursuant to or otherwise in respect of this Second Modification, the Loan Agreement or any of the other Loan Documents, except for duties and obligations to be performed in the future under this Second Modification or any other Loan Document.



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**5.3. Unknown Facts.** Borrower hereby waives the provisions of any applicable Laws restricting the release of claims which the releasing party does not know or suspect to exist at the time of release, which, if known, would have materially affected Borrower's decision to agree to this release. In this regard, Borrower hereby agrees, represents, and warrants to Lender that Borrower realizes and acknowledges that factual matters now unknown to Borrower may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Borrower further agrees, represents and warrants that the release provided hereunder has been negotiated and agreed upon in light of that realization, and that Borrower nevertheless hereby intends to release, discharge and acquit Lender from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are in any manner set forth in or related to the Loan, the Property and all dealings in connection therewith as of the Second Modification Effective Date.

As to each and every claim released hereunder, Borrower also waives the benefit of each other similar provision of applicable federal or state law (including without limitation the laws of the State of Illinois), if any, pertaining to general releases after having been advised by its legal counsel with respect thereto.

**5.4. Punitive Damages.** Borrower waives and releases any right to claim punitive, exemplary or consequential Damages against Lender with respect to each Loan Document, the Property or the Project and any and all actions or omissions of Lender thereunder or with respect thereto, all whether now existing or hereafter arising.

**6. COUNTERPARTS.** This Second Modification may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Second Modification. Delivery of an executed counterpart of this Second Modification by any electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Second Modification. Any party delivering an executed counterpart of this Second Modification by any electronic method of transmission also shall deliver an original executed counterpart of this Second Modification, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Second Modification. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

**7. EXCULPATORY CLAUSE.** ATG Trust Company is executing this Agreement subject to the following exculpatory language: Land Trust executed this Agreement by its trustee signing in a representative capacity and not personally. Anything contained in this Agreement to the contrary notwithstanding, the parties hereto confirm that each and all of the undertakings and agreements of Land Trust are made and intended, not as personal undertakings or agreements of the trustee, or for the purpose of binding the trustee personally, but solely in the exercise of the powers conferred upon the trustee by its beneficiary. No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against, the trustee of the Land Trust on account of any undertaking or agreement contained in this Agreement or on account of any claim concerning the performance of this Agreement. Liability with respect to the entry and performance of this Agreement by or on behalf of the parties hereto, however it may arise, shall be asserted and enforced only against the corpus of the trust or against the beneficiary of the Trust or other parties obligated such as a Guarantor. Any and all personal liability, if any, of the Trustee beyond that which may be asserted under this paragraph, is expressly

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waived and released by the parties hereto and any persons claiming by, through or under. Nothing herein shall be deemed to release any beneficiary from the obligations of this Agreement.

*The remainder of this page is intentionally left blank.*

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IN WITNESS WHEREOF, the parties have executed this SECOND LOAN MODIFICATION AGREEMENT, on November 2, 2009 (the "Second Modification Effective Date").

Signed, sealed and delivered in the presence of:

Witness  
Jeff Richman  
Name

Witness  
Name

Witness  
Jeff Richman  
Name

Witness  
Lenny S. LARSEN  
Name

### BORROWER:

ATG Trust Company as successor to the Northern Trust Company not personally <sup>or individually</sup> but as Trustee under Trust No. 10140 dated July 1, 2004.

By: [Signature]  
Title: Vice President

Division State, LLC  
W.M. Division State

By: [Signature]  
Title: Manager

Mark Hunt as Guarantor

### LENDER:

National City Bank

By: JOHN MURPHY  
Title: VICE PRESIDENT

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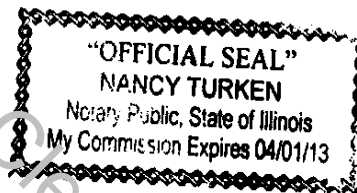
STATE OF IL )  
 ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that MARK HUNT, 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, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this 16<sup>th</sup> day of November, 2009.

Commission expires 4/01 2013

Nancy Turken  
Notary Public



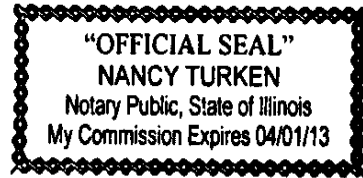
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STATE OF IL )  
 ) SS.  
COUNTY OF COOK )

Before me, a Notary Public in and for said County and State, personally appeared Mark Hunt, known to be the Manager of M Division State LLC (the "Company"), which Company is the Manager of Division State, LLC (the "LLC"), and acknowledged the execution of the foregoing for and on behalf of said LLC in its capacity as the Manager of the Company.

Witness my hand and Notarial Seal, this 16<sup>th</sup> day of November, 2009.

Nancy  
Notary Public



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STATE OF Illinois )  
 ) SS.  
COUNTY OF COOK )

On November 16, 2009, before me, the undersigned, Notary Public in and for said State, personally appeared John Murphy, the Vice President of NATIONAL CITY BANK, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Lynn A. Nichols

Notary Public in and for said County and State



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## EXHIBIT A LEGAL DESCRIPTION OF LAND

LOT 3 IN THE ASSESSOR'S SUBDIVISION OF LOT 6 IN GOTTFRIED KNAUSS SUBDIVISION OF THE NORTH 1/2 OF BLOCK 1 AND THE WEST 100 FEET OF THE SOUTH HALF OF SAID BLOCK 1 IN THE SUBDIVISION BY THE COMMISSIONERS OF THE ILLINOIS AND MICHIGAN CANAL OF THE SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

*1163-1164 N State*  
*1707 200074-076*

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