

UNOFFICIAL COPY



RECORDING REQUESTED BY

Doc#: 0934344057 **Fee:** \$70.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 12/09/2009 11:57 AM Pg: 1 of 18

AND WHEN RECORDED RETURN TO:

Citibank, N.A.
Commercial Real Estate Finance
500 W. Madison St., 7th Floor
Chicago, IL 60661
Attn: Jim Davis

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MODIFICATION AGREEMENT
(Promissory Note with Call Option)

Property of Cook County Clerk's Office

UNOFFICIAL COPY

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (this "**Agreement**") dated for reference purposes only as of November 1, 2009, is made by and between **CITIBANK, N.A., a national banking association** ("**Lender**") and **CHICAGO TITLE LAND TRUST COMPANY**, not personally, but as Trustee under Trust Agreement dated April 5, 1999 and known as Trust Number 1106952 (the "**Trust**"), whose address is 171 N. Clark Street, Suite 575, Chicago, IL 60601 ("**Mortgagor**"), joined by **W. Dennis Wolter** and **Mary L. Wolter**, as sole beneficiaries under the Trust (the "**Beneficiaries**" and, together with the Mortgagor, may, when the context requires, be collectively referred to as the "**Borrower**") with respect to the following facts and circumstances::

RECITALS:

- A. Lender is the current holder of:
1. Trustee Note dated June 23, 2004 (the "**Note**"), evidencing a loan in the original principal amount of \$980,000.00 (the "**Loan**"), executed by the Mortgagor in favor of Citibank, Federal Savings Bank (the "**Original Lender**");
 2. Trustee Mortgage by and between Mortgagor and Original Lender dated June 23, 2004 and recorded July 6, 2004 in the Office of the Recorder of Deeds of Cook County, Illinois as document number 0418845155 (the "**Mortgage**"), securing the Note and encumbering certain real property and personal property related thereto (collectively, the "**Property**"), more specifically described on Exhibit "A" attached hereto and made a part hereof (this Agreement and the Mortgage are hereinafter collectively referred to as the "**Security Instrument**");
 3. Assignment of Rents dated June 23, 2004 and recorded July 6, 2004 in the Office of the Recorder of Deeds of Cook County, Illinois as document number 0418845156 (the "**Assignment of Rents**"); and
 4. Guarantee dated June 23, 2004 and executed by W. DENNIS WOLTER, Trustee under W. Dennis Wolter Trust, in favor of Original Lender.

The foregoing documents, and any other documents evidencing, securing or pertaining to the Loan, are sometimes hereinafter referred to collectively as the "**Loan Documents**".

B. Borrower has requested that Lender agree to a modification of certain terms of the Loan and Lender has so agreed upon the terms, conditions, representations, warranties, covenants and agreements set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Capitalized Terms and Conflicts with Loan Documents. Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meanings designated in the Loan Documents. The provisions of this Agreement shall prevail over any inconsistent provisions set forth in any of the Loan Documents.

LSB

LSB

MW Initials

UNOFFICIAL COPY

2. Consent to Revision of Loan Documents. Lender hereby consents to the revision of the terms of the Loan Documents as specifically set forth in this Agreement, effective upon the satisfaction and performance of the following terms and conditions (the "**Closing Date**"). If these conditions shall not have been met by **December 4, 2009** (the "**Condition Satisfaction Date**"), Lender shall have the right to terminate its obligations under this Agreement, in which event, all of Borrower's obligations under the Loan Documents to Lender shall remain in full force and effect without modification and Lender shall remain entitled to exercise all remedies provided under the Loan Documents or, at Lender's sole option, Lender may extend the Condition Satisfaction Date, which extension shall be in writing and subject to such amended terms and conditions as Lender shall deem advisable, in Lender's sole and absolute discretion.

- 2.1 Execution and Delivery. Execution and delivery by Borrower of this Agreement and such other instruments and agreements as Lender may reasonably request and recordation of this Agreement in the county where the real property is located; execution and delivery by Guarantor of the Guarantor's Acknowledgment Addendum;
- 2.2 Pay Lender Fees. Receipt by Lender of its fees charged in connection with the transactions contemplated under this Agreement (including, without limitation, a modification fee in the amount of \$1,000.00);
- 2.3 Pay all Costs. Borrower shall also pay all other costs and fees incurred by Lender relating to this Agreement, including but not limited to legal fees, title insurance fees, recording costs, mortgage tax and escrow fees. Lender shall be at no expense by reason of this transaction;
- 2.4 Performance under Loan Documents. Performance by Borrower of all of its covenants and responsibilities under the Loan Documents through the Closing Date, including without limitation, payment of all monthly payments and other amounts due and owing under the Note;
- 2.5 Provide Evidence of Required Insurance. Lender shall receive confirmation adequate in its sole discretion that all insurance requirements set forth in the Loan Documents have been met;
- 2.6 Update Lender's Title Policy. Receipt by Lender of a new Lender's ALTA Title Insurance Policy (2006 Form) with endorsements deleting creditor's rights exclusion and arbitration requirements from boilerplate language) in an amount no less than the current unpaid principal amount of the Note **OR** a "date down" of its existing title insurance policy on the Property, supplemented with such endorsements required or requested by Lender, from a title insurance company to be designated by Lender ("**Title Company**") ensuring: (a) the lien evidenced by the Security Instrument as modified by this Agreement constitutes a valid mortgage lien on the real property constituting a portion of the Property, senior in priority to all other liens and encumbrances except such exceptions as Lender shall approve in writing; (b) Lender is the "named insured"; and (c) Borrower is the fee simple owner of the Property and the legal and valid owner of the easements, if any, which constitute a part of the Property;
- 2.7 Obtain Subordination, Nondisturbance and Attornment Agreement(s). If required by Lender, execution, acknowledgement of all signatures, and delivery by Borrower and every Property tenant designated by Lender, of subordination, nondisturbance and attornment agreements, or, if required by Lender, solely subordination agreements;
- 2.8 Obtain Authority. Lender shall be provided evidence satisfactory to Lender and if applicable, Lender's title insurance company, regarding both Borrower's existence, capacity, power and authority to enter into this Agreement and close the transaction

LSB

LSB

mw

Initials

UNOFFICIAL COPY

contemplated hereunder and the validity and enforceability of this Agreement in accordance with its terms; and

- 2.9 Representations True. All representations and warranties of Borrower contained in this Agreement, in the Loan Documents and in any documents or instruments executed in connection with the transaction contemplated hereby, shall be true and correct in all material respects as of the Closing Date and shall not omit to state a fact material to the truth and completeness of any statement made.

3. Current Principal Balance; Confirmation of Liability. The outstanding principal balance under the Note after application of the **November 1, 2009** installment is **\$853,361.52**. Borrower hereby acknowledges, agrees and confirms that Borrower is fully and unconditionally liable for the payment and performance of and compliance with, all of the obligations, liabilities, covenants, representations and warranties under each of the Loan Documents of this Agreement. Borrower hereby acknowledges and confirms that Borrower has received and reviewed copies of all the Loan Documents and understands the provisions, contents and effect of the Loan Documents and this Agreement.

4. Modification to Promissory Note. Subject to the conditions contained in Paragraph 2 above, effective as of the first day of **November 1, 2009** (the "**Effective Date**"), and notwithstanding anything to the contrary contained in the Note, the Note shall be modified pursuant to the provisions set forth in this Section 4. The provisions of this Section 4 shall prevail over any inconsistent provisions set forth in the Note or other Loan Documents.

- 4.1 Call Option. The parties hereto acknowledge and agree that Lender shall have no further rights to exercise the Call Option (as such term is defined and set forth in the Note) and all references and provisions pertaining the exercise of the Call Option in the Note shall be deemed deleted from the Note.

- 4.2 Definitions. The following terms shall have the following meanings (capitalized terms used in this Section 4 but not otherwise defined in this Section 4 shall have the meanings designated in the Note):

- (a) "**INDEX**" and "**THEN CURRENT INDEX**" mean the rate per annum, determined by Lender in accordance with its customary procedures and utilizing such electronic or other quotation sources as it considers appropriate, at which 1-month U.S. Dollar-denominated deposits are offered in the London Interbank market at or about 11:00 a.m. (London time) two (2) Banking Days prior to the commencement of the applicable Interest Period (the "**Index**"). The interest rate change will not occur more often than each Interest Period. "**Interest Period**" means (i) initially, the period commencing on the last day of the Initial Interest Period, as defined below, and ending one month thereafter, and (ii) thereafter each one month period commencing on the last day of the next preceding Interest Period. "**Initial Interest Period**" means the period commencing on the Effective Date and ending on November 30, 2009. The Interest Rate during the Initial Interest Period shall be based on an Interest Period of one month although the actual number of days constituting the Initial Interest Period may be less. In the event that such Index ceases to be published in the referenced sources or in any other generally accepted similar financial publication, or is otherwise no longer available, "**Index**" shall mean a substitute index selected by Lender, in Lender's sole and absolute discretion, in any manner not inconsistent with applicable federal laws. If an Interest Adjustment Date falls on a date which is not a Banking Day, then the first Banking Day immediately preceding such Interest Adjustment Date shall be used for purposes of determining the Then Current Index. As used herein, "**BANKING DAY**" means a day, other than a Saturday or Sunday, on which commercial banks in California and in London,

MLTC

LSB

LSB

mw Initials

UNOFFICIAL COPY

England, are open for business for all banking functions, and on which dealings are carried on in the London Interbank market.

- (b) **"INTEREST RATE"** means the annual rate of interest charged on the principal balance of the Loan evidenced by the Note from time to time, as such rate may be adjusted in accordance with the Note.
- (c) **"INTEREST ADJUSTMENT"** means an increase or decrease in the Then Current Interest Rate as specified in Section 4.3(c) of this Agreement.
- (d) **"INTEREST ADJUSTMENT DATE"** means **December 1, 2009**, and thereafter, the day on which every regularly scheduled Monthly Payment is due during the term of the Note.
- (e) **"MARGIN"** means **Three and Zero one-thousandths percent (3.000%)**.
- (f) **"THEN CURRENT INTEREST RATE"** means the Interest Rate after the most recent Interest Adjustment.

4.3 Interest Rate and Monthly Payments.

- (a) Interest Rate. The outstanding principal balance of the Note shall bear interest from the Effective Date at **Five and Zero one-thousandths percent (5.00%)** per annum (the **"Interest Rate"**). Thereafter, the Interest Rate may be adjusted in accordance with Section 4.3(c) below. Interest due hereunder shall be calculated on the basis of a 360-day year and the actual number of days elapsed which results in more interest than if a 365 or 366 day year were used.
- (b) Payments. Monthly payments of principal and interest, in arrears, shall be due and payable on the first day of each month beginning **December 1, 2009** (each, a **"Monthly Payment"**). The initial Monthly Payment shall be in the amount of \$5706.09. The Monthly Payments shall be adjusted in accordance with Section 4.3(c) below. The Monthly Payment shall be based on an amortization schedule equal to 300 months minus the number of fully elapsed calendar months since the date of the Note. All payments shall be made to Citibank, N.A., at One Sansome Street, San Francisco, CA 94104, or at such other place as Lender notifies Borrower. Monthly Payments shall continue until the remaining indebtedness evidenced by the Note, if not sooner paid, shall be all due and payable on **October 1, 2010** (the **"Final Payment Date"**), which Final Payment Date is earlier than the current maturity date provided in the Loan Documents.

The amortization period used to calculate the Monthly Payments does not fully amortize the Loan during the Term of the Loan, as herein modified and, therefore, a balloon payment will be due on the Final Payment Date.

- (c) Interest Rate Adjustments. On each Interest Adjustment Date, Lender shall decrease or may, at its option, increase the Interest Rate so that the Interest Rate shall equal the sum of the Then Current Index and the Margin (as both such terms are defined in Section 4.2 above), and shall provide notice thereof to Borrower.

Notwithstanding the foregoing, no Interest Adjustment shall exceed 1%. In addition, no Interest Adjustment shall result in a Then Current Interest Rate less than **Five and Zero one-thousandths percent (5.000%)** per annum.

LSB
AW

MW Initials

UNOFFICIAL COPY

- 4.4 Prepayment Privilege. Notwithstanding anything to the contrary contained in the Note, Borrower shall have the right to prepay the whole or any part of the unpaid principal balance of the Note on any scheduled payment date under the Note, together with all accrued and unpaid interest owing under the Note on the amount so prepaid, and all other sums then due under any of the Loan Documents, upon giving not less than thirty (30) day's prior written notice (the "**Prepayment Notice**") to Lender, specifying the amount of principal of the Note to be prepaid and the scheduled payment date on which such prepayment is to be made. If Borrower delivers the Prepayment Notice, such notice shall be irrevocable and the amount to be prepaid, as set forth in Borrower's Prepayment Notice, shall become due and payable on the date specified in such Prepayment Notice. In the event of a prepayment of less than all of the unpaid principal balance of the Note: (i) the amount prepaid shall be in multiples of \$1,000, and (ii) such prepayment shall not alter the amount of the Monthly Payments of principal and interest payable by Borrower.
5. Acceleration. Nothing herein shall be construed as limiting Lender's right to accelerate the indebtedness under the Loan Documents, and to declare the same to be immediately due and payable, in the event of default under the Loan Documents.
6. Borrower Representations and Warranties. Borrower, hereby represents and warrants to Lender as follows:
- 6.1 This Agreement and the Loan Documents have been duly executed by Borrower and constitute the valid, legal and binding obligations of Borrower, enforceable in accordance with their respective terms and the execution hereof is not in violation of any provision of the trust agreement or any amendments thereto. All consents, approvals, and authorizations which pertain to Borrower in order to permit or authorize Borrower to enter into and perform all obligations of Borrower under or with respect to this Agreement have been obtained and are in full force and effect.
- 6.2 Borrower is the lawful owner of good and marketable fee simple title to the Property and the legal and valid owner of the easements, if any, which constitute a part of the Property.
- 6.3 Neither this Agreement nor the Loan Documents nor any other document, financial statement, income and operating statement, rent roll, credit information, certificate or statement furnished to Lender by Borrower, whether pursuant to this Agreement or otherwise, contains any materially untrue statement or omits to state a fact material to the truth and completeness of any statement made.
- 6.4 No event has occurred and no condition exists which, as of the execution of this Agreement, will result, either immediately or with a lapse of time or the giving of notice or both, in the occurrence or existence of any event of default under this Agreement or any of the Loan Documents. Borrower is and continues to be in compliance with all representations and warranties contained in the Loan Documents.
7. No Defenses, Set-offs or Counterclaims. Borrower represents and warrants to Lender that it has no claims, defenses, set-offs, or counterclaims of any kind or nature whatsoever against Lender with respect to the Loan Documents or obligations thereunder, or any action previously taken or not taken by Lender with respect thereto or with respect to any security interest, encumbrance, lien, or collateral in connection therewith to secure the outstanding indebtedness under the Loan Documents.
8. Waiver and Release. Borrower acknowledges, certifies, represents and warrants that it has no claims or defenses in connection with the Loan Documents, any interest in arrears, any late charges, any balance in any accumulation account or the interest and other sums heretofore paid or payable pursuant to, or in connection with the Note or any of the other Loan Documents. Borrower, for itself, and each of its shareholders, officers, directors, agents, employees, representatives, affiliates, successors, assigns, and all persons acting by, through, under or under control of any of the foregoing (hereinafter collectively

[Handwritten initials]
Initials

UNOFFICIAL COPY

referred to as "**Releaser**"), hereby releases, waives, discharges, and covenants not to sue Lender or its officers, directors, shareholders, affiliates, agents, employees, successors, assigns and/or representatives (hereinafter collectively referred to as "**Releasee**") with respect to any and all past, present and potential future claims, causes of action, damages, demands, costs and other liabilities of any kind, direct or indirect, known or unknown, foreseen or unforeseen, which any Releaser now has or which may arise in the future and which relate to or arise from any of the following: (a) Releasee's administration of the Loan on or before the date of execution of this Agreement; (b) the conduct of any Releasee during the negotiation, documentation, execution and delivery of the restructuring of the Loan and the modification of the Loan Documents; and (c) any other actions or omissions by the Releasee prior to the date of this Agreement in connection with the Loan Documents or the Real Property.

8.1 No Assignment. Releaser represents and warrants that Releaser has not assigned, in whole or in part, any of the claims released herein. Borrower agrees that, if Borrower or any other Releaser asserts against any Releasee any of the claims released herein, Borrower and/or each of its partners shall pay, in addition to any other damages caused by the Releasees thereby, all reasonable attorney's fees incurred by the Releasees in defending or otherwise responding to the released claims.

8.2 Voluntary Waiver and Release; Subsequent Facts. Borrower acknowledges that this waiver and release is voluntary and without any duress or undue influence, and is given as part of the consideration for Lender's accommodation of Borrower's request for modification of the Loan. Borrower expressly acknowledges that it may hereafter discover facts different from or in addition to those, which it now believes to be true with respect to the release of claims. Borrower agrees that the foregoing release shall be and remain effective in all respects notwithstanding such different or additional facts.

9. No Waiver. Any waiver of the rights of Lender occurring on or before the date of this Agreement shall not, and do not, constitute the waiver of any rights of Lender to fully enforce the terms and conditions of any of the Loan Documents hereafter. Nor shall the delay in pursuing any remedy or in insisting upon full performance for any breach or failure of any covenant, condition or promise herein prevent Lender from later pursuing remedies for which the applicable statutes of limitation have not run or been waived or from insisting upon full performance for the same or similar breaches or failures.

10. Continuation of Rights. Borrower acknowledges and agrees that the modification of the Loan Documents do not alter, impair or affect in any fashion (or evidence the intent of either party to alter, impair or affect in any fashion) any and all past, present, and future claims, causes of action, damages, demands, costs and other liabilities of any kind, direct or indirect, known or unknown, foreseen or unforeseen, which Lender or any of its officers, successors, assigns and/or representatives now has or may have in the future against Borrower, its general partners, agents, employees, representatives, affiliates, successors, assigns and all persons acting by through, under or under the control of any of the foregoing which relate to, arise from or are connected with the Loan except as specifically set forth in this Agreement and in the Loan Documents as modified.

11. Acknowledgment of Reliance. Borrower further acknowledges and agrees that Lender is specifically relying upon the representations, warranties and agreements contained herein as an inducement to Lender to enter into this Agreement.

12. Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally or sent by overnight or reliable express courier, or by registered or certified mail, postage prepaid, return receipt requested and addressed as listed below or to such other address as the party concerned may substitute by written notice to the other. All notices shall be deemed received upon deposit with the United States Postal Service or upon delivery to the courier service.

LSB

hw

Initials

UNOFFICIAL COPY

To Borrower: Chicago Title Land Trust Company,
as successor in interest to American
National Bank and Trust Company of Chicago
Attention: Land Trust Department
171 N. Clark Street, Suite 575
Chicago, IL 60601

To Lender: Citibank, N.A.
One Sansome Street, 19th Floor
San Francisco, CA 94104
Attn: Commercial Loan Servicing
Loan No: 02-8303315

Notices sent by Lender pertaining to adjustments in the interest rate or the monthly payments under the Note, as modified hereby, or monthly payments made by Borrower under the Note shall not be required to be sent by registered or certified mail.

13. Cross Default. Each of the parties hereto agrees that the occurrence of a default hereunder shall also be considered a material default or an event of default under the Loan Documents and will enable Lender to avail itself of all remedies provided under the Loan Documents.

14. Time of the Essence. Time is of the essence in the performance of every provision hereof.

15. Severability. If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, then the remainder of this Agreement, or the application of such provision, to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. Entire Agreement; Amendment. This Agreement constitutes the entire agreement among the parties hereto with respect to the matters set forth herein, and there are no agreements, understandings, warranties or representations except as specifically delineated herein. Any exhibits attached hereto are hereby incorporated herein by reference and made a part hereof. This instrument is not intended to have any legal effect, or to be a legally binding agreement, or any evidence thereof, until it has been signed by each of the parties hereto and all conditions to effectiveness hereunder have been satisfied. This Agreement shall not be amended or modified in any way except by an instrument in writing executed by each of the parties hereto.

17. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives and assigns. This Agreement is entered into for the exclusive benefit of the parties hereto and no other party shall derive any rights or benefits herefrom.

18. Further Assurances. The parties hereto agree that upon the reasonable request of the other party to this Agreement, each such party will execute and deliver to the requesting party such other additional instruments and documents, or perform or cause to be performed such other and further acts and things, as may be reasonably necessary to more fully consummate the transactions as set forth in this Agreement provided, however, that performance by either party under this paragraph shall not create any new liability or obligation on the performing party whatsoever.

19. Loan Documents Continue. Borrower hereby further ratifies and acknowledges the continuing validity and enforceability of the Loan Documents and the obligations and first liens evidenced thereby. Except as expressly provided in this Agreement, all terms, covenants, conditions and provisions of the Loan Documents shall be and remain in full force and effect as written unmodified hereby. In the event of any conflict between the terms of this Agreement and the Loan Documents, this Agreement shall control.

 Initials

UNOFFICIAL COPY

20. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the United States of America and any rules, regulations or orders issued or promulgated thereunder applicable to the affairs of, or transactions entered into, by Lender as a national banking association; and this Agreement shall, to the extent not covered thereby, otherwise be governed by, and construed and enforced in accordance with, the laws of the state where the Property is located without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than such state.

21. Stipulated Appointment of Receiver and Lender's Relief from Stay. Borrower hereby agrees, in consideration of the recitals and mutual covenants contained herein, and for other good and valuable consideration, including the forbearance of Lender from exercising its rights and remedies otherwise available to it under the Loan Documents, as hereby amended, the receipt and sufficiency of which are hereby acknowledged, to the following:

- 21.1 If Borrower shall default in its obligations under the Loan Documents, as hereby amended, and Lender shall seek the ex parte appointment of a receiver, Borrower shall consent and stipulate to such receiver, and shall not otherwise interfere with Lender's ex parte petition to obtain the appointment of a receiver.
- 21.2 The concessions offered by Lender in this Agreement afford relief similar to that which Borrower might obtain through a plan of reorganization under Chapter 11 of the United States Code, as amended ("**Chapter 11**"). In view of that fact, Lender would not agree to forbear from enforcing its remedies or to accept a discounted repayment as provided in this Agreement if Lender believed that Borrower were likely to file a petition for reorganization under Chapter 11 in response to any foreclosure or other enforcement proceedings that Lender might pursue after the forbearance period expires, since a Chapter 11 plan of reorganization could result in still further concessions being imposed on Lender. By its acceptance of the offer made in this Agreement, Borrower represents that it has no intention of filing a Chapter 11 petition and agrees that, in the event Borrower shall during the term of this Agreement (a) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the U.S. Code, as amended, (b) be the subject of any order for relief issued under such Title 11 of the U.S. Code, as amended, (c) file or be the subject of any petition seeking any liquidation, dissolution or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (d) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator, or (e) be the subject of any order, judgment or decree entered by any court of competent jurisdiction approving a petition filed against such party for liquidation, dissolution or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency or relief for debtors, Lender shall thereupon be entitled to complete and unconditional immediate relief from any automatic stay imposed by Section 362 of Title 11 of the U.S. Code, as amended, or otherwise, on or against the exercise of the rights and remedies otherwise available to Lender as provided in the Loan Documents, as hereby amended, and as otherwise provided by law.

22. Waiver of Jury Trial. **To the fullest extent permitted by law, Borrower and Lender HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, the Note, this Modification Agreement, the Deed of Trust or any of the Loan Documents, or the enforcement of any remedy under any law, statute, or regulation. Neither party will seek to consolidate any such action in which a jury has been waived, with any other action in which a jury trial cannot or has not been waived. Each party acknowledges that it has received the advice of counsel with respect to this waiver.**

23. Advice of Independent Counsel. Borrower hereby represents and warrants that it has had the advice of independent legal counsel of its own choosing, duly admitted to practice in the State of

MW Initials

UNOFFICIAL COPY

California, in negotiations for and during the preparation of this Agreement, that it has read the provisions of this Agreement, that all provisions of this Agreement have been fully explained to it by its attorneys, and that it is fully aware and understands the provisions of this Agreement and their legal effect and consequences. Borrower hereby represents and warrants that it has executed this Agreement on the advice of its attorneys, after careful and independent investigation, and is not executing this Agreement under fraud, duress or undue influence.

[Remainder of page intentionally left blank]

Property of Cook County Clerk's Office

CLC

LSB


Handwritten signature
mw Initials

UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above stated.

LENDER:

CITIBANK, N.A., a national banking association

By: 

Name: James Davis

Title: Vice President

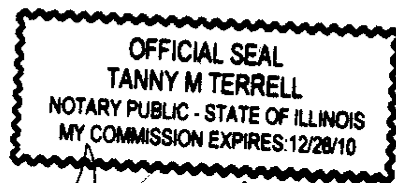
Commercial Real Estate Finance
Citibank, N.A.
500 West Madison Street
Chicago, IL 60661
(312) 627-3963
jim.davis@citigroup.com

STATE OF Illinois)

COUNTY OF Cook)

The foregoing instrument was acknowledged before me this 1st day of November, 2009 by Jim Davis as Vice President of CITIBANK, N.A., a national banking association, who is personally known to me.


NOTARY SEAL



Notary: 

Print Name: Tanny M. Terrell
Notary Public, State of Illinois

My commission expires: 12/28/10 _____


MW Initials

UNOFFICIAL COPY

It is expressly understood and agreed by and between the parties hereto, anything 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 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 CHICAGO TITLE LAND TRUST COMPANY, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.


County Clerk's Office

UNOFFICIAL COPY


WITNESSES:

MORTGAGOR:

CHICAGO TITLE LAND TRUST COMPANY, not personally, but as Trustee under Trust Agreement dated April 5, 1999 and known as Trust Number 1106952



Print Name: Angelo V. Cotroneo



Print Name: SHEILA DAVENPORT

By: Lynda S. Barrie **ASST. VICE PRESIDENT**
Not personally but as Trustee under Trust Number 1106952

ATTACHED INSTRUMENT PAGE IS UNCORRECTED VERSION

STATE OF Illinois

COUNTY OF Cook

The foregoing instrument was acknowledged before me this 1st day of ~~November~~ December, 2009 by Lynda S. Barrie as A.V.P. of **CHICAGO TITLE LAND TRUST COMPANY**, not personally, but as Trustee under Trust Agreement dated April 5, 1999 and known as Trust Number 1106952, who is personally known to me or who has produced _____ as identification.

NOTARY SEAL



Notary: Natalie Foster
Print Name: _____
Notary Public, State of _____
My commission expires: _____

AW
MW Initials

UNOFFICIAL COPY

STATE OF Indiana)

COUNTY OF Laporte)

The foregoing instrument was acknowledged before me this 24th day of November, 2009 by MARY L. WOLTER, an individual, who is personally known to me or who has produced Indiana Drivers License 1900458266 as identification.

SANDRA L. SMITH

Notary Public, State of Indiana

NOTARY **My Commission Exp. May 10, 2015**

Notary: Sandra L. Smith
Sandra L. Smith

Print Name:
Notary Public, State of Indiana

My commission expires: 5-10-15

DOCUMENT IS NOT TO BE EXECUTED IN COUNTERPARTS
OR UNDER A POWER OF ATTORNEY
ALL SIGNATURES MUST BE ACKNOWLEDGED

MS
mw

UNOFFICIAL COPY

GUARANTOR'S ACKNOWLEDGMENT ADDENDUM

The undersigned, as Guarantor, hereby acknowledges receipt of a copy of the Modification Agreement (the "**Modification Agreement**") to which this Guarantor's Acknowledgment Addendum (the "**Acknowledgement**") is attached and consents to the terms therein and herein. Capitalized terms used in this Acknowledgment, if not otherwise defined, shall have the same meaning as set forth in the Modification Agreement. Guarantor acknowledges that, by executing this acknowledgment, Guarantor expressly reaffirms Guarantor's liability under the **Guarantee dated June 22, 2004** (the "**Guaranty**") and the other Loan Documents. Guarantor understands that Guarantor's waivers and agreements set forth in this Acknowledgment constitute additional and cumulative benefits given to Lender for its security and as an inducement for Lender to enter into the Modification Agreement. Guarantor represents and warrants that Guarantor is not the subject of any Chapter 11 or other proceeding under the Bankruptcy Code.

(a) Guarantor hereby waives, to the fullest extent permitted by law: (i) presentment, demand, protest, diligence, notice of demand, notice of protest, notice of dishonor, notice of nonperformance, notice of nonpayment, notice of acceptance and all other notices and other formalities which may be required by statute, rule of law or otherwise to preserve intact Lender's rights against Guarantor under the Guaranty; (ii) the right, if any, to the benefit of, or to direct application of, any security hypothecated to Lender, until all indebtedness guaranteed under the Guaranty (the "**Guaranteed Indebtedness**") and the obligations guaranteed under the Guaranty (the "**Guaranteed Obligations**"), howsoever arising, shall have been paid and/or performed; (iii) the right to require Lender to proceed against Borrower or any other pledgor or guarantor of the Note or to pursue any other remedy in Lender's power; (iv) the right to require Lender to proceed against or exhaust any security or collateral Lender may hold; (v) any defense arising by reason of any disability or other defense of Borrower or by reason of the cessation from any cause whatsoever of the liability of Borrower other than full payment of the Guaranteed Indebtedness and full performance of the Guaranteed Obligations; (vi) all statutes of limitations as a defense in any action or proceeding brought against Guarantor by Lender, to the fullest extent permitted by law (and Guarantor agrees that any partial payment by Borrower or other circumstances which operate to toll any statute of limitations as to Borrower shall also operate to toll the statute of limitations as to Guarantor); (vii) any defense based upon Lender's failure to perfect or continue the perfection of any lien or security interest in collateral that secures the Guaranteed Obligations; (viii) any defense arising due to any failure by Lender to inform Guarantor of any facts Lender may now or hereafter know about Borrower or Borrower's financial condition, the Loan, the Property or the transactions contemplated by the Loan Documents; (ix) all benefits and defenses purporting to reduce a guarantor's obligations in proportion to the principal obligation, and Guarantor agrees that by doing so Guarantor's liability may be larger in amount or more burdensome than that of Borrower; (x) any defense arising due to Lender's modification, change or alteration of any of the terms, provisions, covenants or conditions of the Note or any of the other Loan Documents; (xi) any defense based on any action taken or omitted by Lender in any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships; and (xii) all other rights and remedies now or hereafter accorded by applicable law to sureties or guarantors. Guarantor hereby acknowledges that Guarantor is liable even if Borrower had no liability at the time of execution of the Note or thereafter ceased to be liable and Guarantor further agrees that Guarantor's liability shall continue even if Lender alters any obligations under the Loan Documents in any respect or Lender's remedies or rights against Borrower are in any way impaired or suspended without Guarantor's consent, whether or not due to the act or omission of Lender.

(b) Without limiting the generality of the foregoing, Guarantor agrees that Guarantor shall have no right of subrogation or reimbursement against Borrower, no right of subrogation against any collateral or security provided for in the Loan Documents and no right of contribution against any other guarantor or pledgor unless and until all amounts due under the Loan Documents have been paid in full and Lender has released, transferred or disposed of all of its right, title and interest in any collateral or security.

(c) Without limiting the generality of the foregoing, Guarantor further waives, to the fullest extent permissible by law:



UNOFFICIAL COPY

- (i) All rights and defenses arising out of an election of remedies by Lender.
- (ii) All rights and defenses that Guarantor may have because Borrower's debt is secured in whole or in part by real property. This means, among other things:
 - (A) Lender may proceed against and collect any or all of the Guaranteed Obligations and/or Guaranteed Indebtedness from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower.
 - (B) If Lender forecloses on any real property collateral pledged by Borrower:
 - (1) The amount of the Guaranteed Indebtedness may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
 - (2) Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower any sums that Guarantor pays to Lender pursuant to this Guaranty.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations and/or Guaranteed Indebtedness are secured by real property.

(d) Guarantor acknowledges that the waivers made by Guarantor in this Guaranty are made knowing that their intent is to deprive Guarantor of the benefits and defenses that would or could otherwise be available to Guarantor under the statutory provisions referenced herein.

GUARANTOR:


 Name: W. DENNIS WOLTER


 Name: MARY L. WOLTER

GUARANTOR'S ACKNOWLEDGEMENT NOT TO BE EXECUTED UNDER A POWER OF ATTORNEY
ALL SIGNATURES MUST BE ACKNOWLEDGED




UNOFFICIAL COPY

NOTARY ACKNOWLEDGEMENTS

(GUARANTOR'S ACKNOWLEDGMENT ADDENDUM)

STATE OF Indiana)
COUNTY OF Laporte)

The foregoing instrument was acknowledged before me this 24th day of November, 2009 by W. DENNIS WOLTER, an individual, who is personally known to me or who has produced Indiana Drivers License 090114 8272 as identification.

NOTARY SEAL

SANDRA L. SMITH
Notary Public, State of Indiana
My Commission Exp. **May 10, 2015**

Notary: Sandra L. Smith
Sandra L. Smith

Print Name:
Notary Public, State of Indiana

My commission expires: 5-10-15

STATE OF Indiana)
COUNTY OF Laporte)

The foregoing instrument was acknowledged before me this 24th day of November, 2009 by MARY L. WOLTER, an individual, who is personally known to me or who has produced Indiana Drivers License 1900458266 as identification.

NOTARY SEAL

SANDRA L. SMITH
Notary Public, State of Indiana
My Commission Exp. **May 10, 2015**

Notary: Sandra L. Smith
Sandra L. Smith

Print Name:
Notary Public, State of Indiana

My commission expires: 5-10-15

GUARANTOR'S ACKNOWLEDGEMENT NOT TO BE EXECUTED UNDER A POWER OF ATTORNEY
ALL SIGNATURES MUST BE ACKNOWLEDGED

MLW
MLW

Initials

UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION

ALL OF LOT ONE (1), ALL OF LOT TWO (2) AND LOT THREE (3) (EXCEPT THE WEST 30 FEET THEREOF) IN MARTIN McNULTY'S ADDITION TO ARGYLE, BEING A SUBDIVISION IN THE SOUTHWEST QUARTER (1/4) OF SECTION 8, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 14-08-304-026-0000

Property of Cook County Clerk's Office



Initials