

[NOTE TO ATTORNEY PREPARING THIS FORM:

“{{{” AND “}}” BRACKETS INDICATE VARIABLE TERMS THAT NEED TO BE REPLACED WITH THE ACTUAL NAMES OF THE PARTIES AND OTHER BUSINESS TERMS THAT APPLY TO YOUR PARTICULAR DEAL. FOR EXAMPLE, “{{{1/MORTGAGE LENDER}}” SHOULD BE REPLACED WITH THE NAME OF THE ACTUAL MORTGAGE LENDER. IF YOU ARE USING THIS FORM FREQUENTLY, A SEPARATE DATA INPUT SHEET IS AVAILABLE THAT LISTS ALL OF THESE VARIABLE TERMS, AND THAT WILL FACILITATE THE “SEARCH AND REPLACE” PROCESS OR COMPUTER DOCUMENT ASSEMBLY. BEFORE USING THE FOLLOWING FORM, SEARCH FOR THE FOLLOWING UNDERLINED PHRASE: FORM OPTIONAL PROVISIONS. THIS IS THE HEADING FOR OPTIONAL PROVISIONS THAT ARE APPENDED TO THIS FORM. AFTER DECIDING WHETHER TO USE ANY OF THESE PROVISIONS, YOU SHOULD THEN DELETE THE REMAINING “FORM OPTIONAL PROVISIONS”. WHEN YOU ARE FINISHED, SEARCH FOR BLANK LINES, “*”, “{{{” AND “}}”, TO MAKE SURE THAT THERE ARE NO VARIABLE TERMS OR BLANKS THAT NEED TO BE COMPLETED. FINALLY, READ, AND THEN DELETE, EACH FOOTNOTE AND THIS HEADING.]**

LOAN MODIFICATION AGREEMENT*

{{{10/MORTGAGE BORROWER}}}, Borrower

{{{18/GUARANTOR}}}, Guarantor

{{{1/MORTGAGE LENDER}}}, Lender

Dated as of: _____ ***, 200 ____ **

*Reproduced with the permission of the publisher and copyright holder from *Real Estate Financing* by Brook Boyd, copyrighted by ALM Properties, Inc., and published by Law Journal Press, a division of ALM, Inc. All rights reserved. Copies of the complete work may be ordered from Law Journal Press, Book Fulfillment, 120 Broadway, New York, New York 10271 or on the Web at www.lawcatalog.com.

LOAN MODIFICATION AGREEMENT

Loan Modification Agreement (the “Agreement”), made as of _____, 200__**, between {{{1/MORTGAGE LENDER}}} (“Lender”), {{{1.9/TYPE OF MORTGAGE LENDER}}}, having an address at {{{1.1/ADDRESS OF MORTGAGE LENDER (FOR NOTICES)}}}, {{{10/MORTGAGE BORROWER}}} (“Borrower”), {{{10.10/TYPE OF MORTGAGE BORROWER}}}, having its principal place of business at {{{10.2/PRINCIPAL PLACE OF BUSINESS OF MORTGAGE BORROWER}}}, and {{{18/GUARANTOR}}} (“Guarantor”) {{{18.5/TYPE OF GUARANTOR}}}, having an address at {{{18.1/ADDRESS OF GUARANTOR}}}; Guarantor and Borrower being collectively called the “Obligors”).

RECITALS

A. The Lender made a loan (the “Loan”) of \${{{3/AMOUNT OF MORTGAGE LOAN}}} to Borrower, as evidenced by that certain promissory note (the “Note”) dated _____** in the original principal amount of \${{{3/AMOUNT OF MORTGAGE LOAN}}} (the “Loan”).

B. As security for Borrower’s obligations under the Note and to secure other obligations of Borrower to the Lender, the Borrower executed and delivered to the Lender a mortgage (the “Mortgage”) dated _____**. The Mortgage encumbers the property located at {{{13/ADDRESS OF REAL ESTATE}}} (the “Property”).

C. As additional security for the Borrower’s obligations under the Note and other obligations of any kind of the Borrower to the Lender, {{{18/GUARANTOR}}}(the “Guarantor”) executed and delivered a guaranty dated _____** (the “Guaranty”) pursuant to which the Guarantor guaranteed various Obligations.¹

D. The Note, the Mortgage, the Guaranty, and all other documents evidencing or securing any Obligations (including this Agreement and the Amendment Documents, defined below), as the same may be amended, modified, extended, spread, consolidated, updated, restated or replaced from time to time, shall be referred to as the “Loan Documents.”

E. Events of Default have occurred under the Loan Documents by reason of, inter alia, Borrower’s failure to _____**. By reason of these events of default, Lender has the absolute and unconditional right to _____**.² Obligors acknowledge that interest has continued to accrue and is due and owing on the unpaid Obligations. Obligors further agreed that all of the sums set forth in Schedule B attached hereto (inclusive of principal and interest) are due and

1 This assumes that there is only one guaranty, and that it is a guaranty of payment. If there are other guarantees, then they should be specified here.

2 Insert the applicable language – e.g., “demand the immediate payment by Obligors of all Obligations.”

owing from Obligors to Lender without counterclaim, defense, offset or right of reduction of any kind.

F. Obligors have requested that Lender agree to a modification of the Loan on the terms and conditions hereinafter contained.

NOW, THEREFORE, in consideration of the premises, and the undertakings herein including the payment by the Obligors to the Lender of the amounts set forth in this Agreement, and for other good and valuable consideration, the parties hereto covenant and agree as follows:

1. Reaffirmation of Existing Loan Documents. Except as expressly provided otherwise in this Agreement, each Obligor agrees that all terms and conditions of each of the Loan Documents do and shall remain in full force and effect, enforceable in accordance with their terms, without modification. Each Obligor shall fully, timely, and faithfully perform each of its Obligations under the Loan Documents except as expressly modified by this Agreement or the Amendment Documents.

2. Acknowledgment of Defaults and Current Balance. Each of the Obligors acknowledges, represents, and warrants as follows: (a) one or more defaults exist under the Loan Documents as described above in this Agreement; (b) the Lender has the right to declare that the Note and all Obligations are immediately due and owing in full; and (c) as a result of such defaults, one or more Events of Default exist under the Loan Documents, and the Lender is entitled to exercise its rights and remedies immediately as provided in the Loan Documents, without further notice or opportunity to cure; (d) the amounts set forth on the attached Schedule B as of the date set forth on Schedule B are immediately due and owing by Obligors to Lender; (e) interest has continued to accrue at the per diem rate for each Loan as set forth on the attached Schedule B; (f) as of the date hereof there is due and owing by the Obligors, to the Lender, attorneys' fees and disbursements incurred by the Lender arising out of its enforcement of its rights and remedies under the Loan Documents and the preparation, execution, delivery, amendment and enforcement of this Agreement, the other Amendment Documents, and the Loan Documents, in the approximate amount of \$ _____ (the "Lender's Legal Fees") (the amounts included above in clauses (d), (e) and (f) of this paragraph collectively comprise the "Current Balance"), which amount Obligors agree is reasonable and owing to Lender under the Loan Documents; and (f) the Current Balance is due immediately to the Lender without setoff, counterclaim, defense or right of reduction of any kind.

3. Document Deliveries.

(a) Loan Agreement Amendment; Note Amendment. Simultaneously with the execution and delivery of this Agreement, Borrower shall execute and deliver to Lender 1) the Loan Agreement Amendment substantially in the form attached hereto as Exhibit A, and the Note Amendment substantially in the form attached hereto as Exhibit B.

- (b) Mortgage Amendment. Simultaneously with the execution and delivery of this Agreement, Borrower shall execute and deliver to Lender the Mortgage Amendment, substantially in the form attached hereto as Exhibit C.
- (c) Assignment Amendment. Simultaneously with the execution and delivery of this Agreement, Borrower shall execute and deliver to Lender the Assignment Amendment, substantially in the form attached hereto as Exhibit D.
- (d) Security Agreement Amendment. Simultaneously with the execution and delivery of this Agreement, Borrower shall execute and deliver the Security Agreement Amendment, substantially in the form attached hereto as Exhibit E.
- (e) Reaffirmation of Guaranties. Simultaneously with the execution and delivery of this Agreement, each Guarantor shall execute and deliver to Lender a Reaffirmation of Guaranty, substantially in the form attached hereto as Exhibit F.
- (f) UCC Financing Statements. Borrower consents to Lender filing or recording the UCC Financing Statements substantially in the form attached hereto as Exhibit G.
- (g) Budget. Borrower represents and warrants that, annexed hereto as Exhibit H, is a budget including all projected income and expenses (as determined by the Borrower to the best of its knowledge, after making due inquiry) for the Property and the Borrower (the “Budget”) for the time period set forth in such Budget (or if no time period is set forth in such Budget, then for the calendar year in which the date of this Agreement falls). The Borrower agrees not to incur any expense that is not set forth in the Budget unless 1) the Borrower gives notice to the Lender requesting its approval to such expense, and 2) the Lender either grants such approval, or fails to object to such expense within fifteen (15) days after the receipt by the Lender of notice of such expense. The Borrower further agrees to submit to the Lender a new proposed budget, not later than thirty (30) days before the last day of the period covered by the then current Budget, for the Lender’s review and approval; and such proposed budget shall be deemed to be the Budget only if and when it is approved by the Lender. The Lender may withhold any such approval specified above in this paragraph in its sole and arbitrary discretion.
- (h) Reaffirmation of each Letter of Credit.³ Execution and delivery of this Agreement constitutes each Obligor’s reaffirmation of its obligations with respect to each Letter of Credit, including such Obligor’s obligation to repay upon demand by Lender any and all sums drawn by any beneficiary under any Letter of Credit.
- (i) Limitations on Indebtedness. From the date of this Agreement until all Obligations are indefeasibly paid in full, each Obligor shall not, without prior written approval of

³ Delete the references to the “Letter of Credit” if there is no letter of credit in favor of the Lender in connection with the Loan.

Lender (which approval Lender may withhold in its sole and absolute discretion): (i) incur any Indebtedness other than (A) the Obligations and (B) Indebtedness incurred, as set forth in the Budget, in the ordinary course of the Borrower's business; and (ii) make any capital expenditures other than purchases of new Collateral, as set forth in the Budget, and in the ordinary course of the Borrower's business.

- (j) Limitations on Liens. From the date of this Agreement until all Obligations are indefeasibly paid in full, each Obligor shall not grant, permit or suffer any Lien or other Permitted Exception in or upon any Collateral other than Liens as permitted on the attached Schedule C.
- (k) Limitations on Affiliates. From the date of this Agreement until all Obligations are indefeasibly paid in full, each Obligor shall not, without prior written approval of Lender (which approval Lender may withhold in its sole and absolute discretion): (i) transfer to any other Obligor, or to any Affiliate of any Obligor, any Collateral, any Proceeds, or any other property of any kind, or (ii) create, form or acquire any Affiliate, or suffer any Affiliate to be created, formed or acquired by any Obligor or any of its Affiliates.
- (l) Limitations on Transfers. From the date of this Agreement until all Obligations are indefeasibly paid in full, no Obligor shall make any transfer of such Obligor's interest in any Collateral or any Proceeds, other than payment of reasonable expenses incurred by such Obligor in the ordinary course of its business in accordance with the Budget.
- (m) Limitations on Dividends. From the date of this Agreement until all Obligations are indefeasibly paid in full, no Obligor shall make or pay any dividend, distribution, loan, payment or other transfer of any kind to any partner, member, or shareholder of, or owner of any other equity interest in, any Obligor, other than pursuant to the Budget.
- (n) TIME IS OF THE ESSENCE. As to all payments and actions required to be made or done by any Obligor under this Agreement or any of the Loan Documents, **TIME IS OF THE ESSENCE.**

4. Lender Expenses. Each Obligor acknowledges that such Obligor is jointly and severally obligated to pay all expenses (including, without limitation, reasonable fees and expenses of attorneys, accountants and other advisors) incurred by Lender in connection with the transactions described in this Agreement (the "Lender Expenses"). On or before the date of this Agreement, Obligors shall pay to the Lender all of the Lender Expenses to the extent that either the amount of such Lender Expenses is disclosed in any of the Amendment Documents or the Lender has invoiced the Obligors for such Lender Expenses. Thereafter, Obligors shall pay each item of Lender Expenses within ten (10) days after Lender has sent to the Obligors an invoice for such item.

5. Amendment Documents; Consideration; This Agreement Controls

- (a) Notwithstanding Section 2 of this Agreement, provided that all conditions precedent as set forth in this Agreement shall have been satisfied, and provided that the Obligors comply with each and every term and condition of this Agreement, **TIME BEING OF THE ESSENCE**, Lender agrees that the Loan shall be modified as set forth in the Amendment Documents. Obligors acknowledge that the Lender's agreements pursuant to the Amendment Documents constitute good and valuable consideration in exchange for Obligors' agreement to, and performance of, each of the terms and conditions of this Agreement.
- (b) In the event of any conflict between any Loan Document and this Agreement, this Agreement shall control, and any conflicting term in such Loan Document shall be deemed to have been amended to provide as set forth in the conflicting provision or provisions of this Agreement.

6. No Further Advances By Lender. Each Obligor acknowledges that, except as expressly provided in the Loan Documents, the Lender has no commitment or obligation to advance any sums to any Obligor, to lend any new or additional monies to any Obligor or to extend any additional or other credit to any Obligor pursuant to the Loan Documents beyond those previously advanced by the Lender. Each Obligor further acknowledges and agrees that the Lender has previously advanced to each Obligor all sums to which any Obligor was entitled to be advanced under the Loan Documents. Each Obligor further agrees that principal amounts of the Loan that are prepaid or repaid may not be re-borrowed.

7. Reaffirmation of Grants of Security Interests in Collateral. Without limiting any of the terms and conditions of this Agreement or any document identified in Section 9 below, all Collateral, in which Lender has been granted (or shall pursuant to this Agreement or any of the Amendment Documents be granted) a security interest to secure any of the Obligations, shall continue to secure the Obligations.

8. No Modification of Any Guaranty. Nothing in this Agreement is intended to constitute, shall be deemed to constitute, or is a waiver, estoppel, postponement, release, relinquishment, abandonment or any other abrogation or modification of, any term or condition of any Guaranty or any other Obligation, other than as expressly provided in this Agreement.

9. Conditions Precedent. As a condition precedent to the Lender's obligations under this Agreement, the Obligors must deliver, or cause to be delivered, to the Lender fully executed original counterparts of the following documents (and the Obligors must also make all payments, and must take all actions, that are specified below in this Section):

- (a) this Agreement;
- (b) the other Amendment Documents;

- (c) all other documents that are listed on the checklist that is attached as Exhibit I and that are described as being the responsibility of the Borrower or the Borrower's counsel to provide; and
- (d) payment of the Lender Expenses.

10. Events of Default. If there shall occur any of the following (each, an "Event of Default"):

- (a) Any breach or default by any Obligor of or under any of the terms and conditions of this Agreement, that has not been cured within any applicable notice or grace period; or
- (b) any breach or default by any Obligor of or under any of the other Amendment Documents, that has not been cured within any applicable notice or grace period; or
- (c) the commencement of any Reorganization Proceeding for or relating to any Obligor;

then the Lender may immediately impose the Default Rate without further notice and may exercise any of its rights and remedies as set forth in Section 11(c) below.⁴

11. Further Certification; Agreement Regarding Subsequent Default. Each Obligor certifies and acknowledges that:

- (a) This Agreement and the Loan Documents are valid and enforceable, and the Obligors do not contest the validity or enforceability of any of such Loan Documents, in each case to the extent modified by the Amendment Documents.
- (b) No representation, warranty or promise has been made by, or on behalf of, the Lender that is inconsistent with the terms of any Loan Document, including specifically any Amendment Document, and the Obligors have not relied on any representation or warranty whatsoever in entering into any Loan Document, including specifically any Amendment Document.
- (c) In the event of an Event of Default by any Obligor, each of the following provisions shall apply:

⁴ The Lender may also want to provide that any concessions (e.g., a forbearance, a reduced interest rate, waived events of default) are terminated or rescinded if there is an Event of Default after the Agreement is signed.

- i. Lender may exercise immediately, singularly, consecutively and cumulatively, at such times, with such frequency and in such order as Lender may elect, any and all of Lender's rights and remedies under the Loan Documents. Lender shall not have any obligation to proceed under any Loan Document, or against any Obligor, in any particular order, or any obligation to pursue any other guarantee, Collateral or other security, prior to pursuing any of its rights under any of the Loan Documents. The taking of action by Lender under one or more of the Loan Documents shall not otherwise affect its right to take further action under any of the Loan Documents; and
- ii. No such exercise of any right or remedy by Lender under subparagraph (i) above shall constitute, or be deemed to constitute, an election of remedies.

12. Miscellaneous.

- (a) Successors and Assigns. All covenants, agreements, representations and warranties made herein, or in any certificates delivered in connection herewith, by or on behalf of any party, shall survive the execution and delivery of this Agreement and shall continue in full force and effect, and shall bind and inure to the benefit of the successors and permitted assigns of the parties, whether so expressed or not, and all such covenants, agreements, representations and warranties shall inure to the benefit of the parties' successors and assigns. Except as set forth in this Agreement, no right or privilege is extended to any third party by the provisions hereof.
- (b) No Assignment. No Obligor may assign its rights or delegate its obligations hereunder without the prior consent of the Lender, which consent may be granted or withheld in Lender's sole and absolute discretion.
- (c) Amendment and Waiver. No provision of this Agreement or the other Loan Documents may be changed or modified orally or by fax, email or other electronic means; and any such document may be changed, modified, waived or discharged only by a written agreement if one or more paper counterparts thereof are manually signed in ink, and then delivered, by the signatories thereto.
- (d) Notices. Unless otherwise specified herein, all notices, requests, consents, approvals, demands or other communications to or from the parties hereto shall be in writing and shall be sent 1) by FedEx or other nationally recognized courier, expenses prepaid or charged to the sender, or 2) by telecopier (provided such telecopied material is also sent by mail or courier in the manner set forth herein) or 3) by mail, postage prepaid. All such communications shall be deemed delivered when received; provided that telecopied messages shall not be effective unless such messages are also sent by mail or courier as set forth herein; and provided further, that mail sent via certified mail - return receipt requested, certified fee and normal postage prepaid,

shall be deemed to have been received on the earlier of actual receipt thereof or the fourth day after the postmarked date indicated on the official U.S.P.S. receipt for certified mail. Any such notice, request, demand or other communication shall be delivered or addressed as follows:

(i) if to the Borrower, then to the address of the Borrower first listed above, attn: {{{10.4/MORTGAGE BORROWER'S REPRESENTATIVE}}}, with a copy to {{{11.1/LAW FIRM OF MORTGAGE BORROWER'S ATTORNEY}}}, {{{11.2/ADDRESS OF MORTGAGE BORROWER'S ATTORNEY}}}, attn.: {{{11/MORTGAGE BORROWER'S ATTORNEY}}};

(ii) if to any Guarantor, then to the address of such Guarantor first listed above, with a copy to {{{20.1/LAW FIRM OF GUARANTOR'S ATTORNEY}}}, {{{20.2/ADDRESS OF GUARANTOR'S ATTORNEY}}}, attn.: {{{20/GUARANTOR'S ATTORNEY}}}; and

(iii) if to the Lender, then to the address of the Lender set forth above, attn.: {{{1.3/MORTGAGE LENDER'S REPRESENTATIVE}}}, with copies to {{{2.1/LAW FIRM OF MORTGAGE LENDER'S ATTORNEY}}}, {{{2.2/ADDRESS OF MORTGAGE LENDER'S ATTORNEY}}}, attn.: {{{2/MORTGAGE LENDER'S ATTORNEY}}}.

or at such other address as either party hereto may designate by written notice to the other party hereto in accordance with the terms and conditions of this Section 12(d).

- (e) Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Execution and delivery by facsimile signature shall constitute valid and sufficient execution and delivery.
- (f) Voluntary Agreement. Each Obligor represents and warrants that such Obligor is represented by legal counsel of Obligor's choice or that if such Obligor is not represented by counsel that such non-representation is the knowing and voluntary decision of such Obligor.
- (g) Prior Understandings. This Agreement supersedes any term sheet, commitment letter, or other understanding that addresses the subject matter of this Agreement (whether such term sheet, commitment letter or other understanding is in writing or oral or in fax, email, or other electronic form) and that is delivered to any Obligor or any Person acting on behalf of any Obligor, or to any other party to this Agreement; and each such term sheet, commitment letter and other understanding is hereby merged into this Agreement.

- (h) Negation of Partnership. The relationship between each Obligor on the one hand, and the Lender on the other, is that of debtor and creditor. Nothing contained in this Agreement will be deemed to create a partnership or joint venture, or to cause the Lender to be liable or responsible in any way for the actions, liabilities, debts or obligations of any Obligor, its principals or affiliates or other party.
- (i) Headings; Table of Contents. The Sections and other headings contained in this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation hereof in any respect.
- (j) Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (k) **Law Governing. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF {{{37/STATE WHOSE LAW GOVERNS}}}**.
- (l) Further Assurances. Prior to, and at all times following the date of this Agreement, the parties shall 1) execute and deliver, or cause to be executed and delivered (without cost or out-of-pocket expense to the requesting party), such documents and 2) do, or cause to be done, such other acts and things, as might reasonably be requested by any other party to this Agreement in order to effectuate the intent of this Agreement.
- (m) Conflict With Other Agreements. In the event of any conflict between the terms, covenants and conditions of this Agreement and any of the other Loan Documents, the terms, covenants and conditions of this Agreement shall control.
- (n) Construction of Agreement. The parties hereto agree that the terms and language of this Agreement were the result of negotiations between the parties and, as a result, there shall be no presumption that ambiguities, if any, in this Agreement shall be resolved against either party. Any controversy over the construction of this Agreement shall be decided neutrally, in light of its conciliatory purposes, and without regard to events of authorship or negotiation.
- (o) Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meanings as provided in the Loan Agreement (or if not defined in the Loan Agreement, then as defined in any other applicable Loan Document). Schedule A (“DEFINITIONS”) is part of this Agreement.

- (p) Severance. Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the “Severed Loan Documents”; each loan evidenced by each severed Note being called a “Severed Loan”) in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as the Borrower’s true and lawful attorney, coupled with an interest, and granted for a valuable consideration, in the Borrower’s name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents. Borrower shall provide all financial reports, statements, and other information the Loan Documents require, separately to the holder or servicer of each Severed Loan. The holder of only one Severed Loan, or its servicer, may exercise any and all rights of consent, approval, or control under the Severed Loan Documents relating to such Severed Loan. Each Severed Loan may be separately transferred, assigned, serviced, administered, and enforced. If any Severed Loan is the subject of a securitization, then Borrower shall cooperate with each such securitization as the Loan Documents otherwise require. At the option of the Lender, each Severed Loan may have its own set of loan documents, in substantially the form of the Loan Documents (including severed Mortgages), modified as Lender determines necessary to reflect the severance of the Loan and Loan Documents.

[remainder of page deliberately left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written or have caused these presents to be signed by their proper corporate officers and their corporate seals hereto affixed the day and year first above written.

{{{10/MORTGAGE BORROWER}}}

By: _____

Name:

Title:

{{{18/GUARANTOR}}}

By: _____

Name:

Title:

{{{1/MORTGAGE LENDER}}}

By: _____

Name:

Title:

CONSENT BY MEZZANINE LENDER⁵

{{{100/MEZZ LENDER}}}} (“Mezz Lender”) consents to the foregoing Loan Modification Agreement (the “Agreement”) among {{{1/MORTGAGE LENDER}}}} (“Lender”), {{{10/MORTGAGE BORROWER}}}} (“Borrower”), and {{{18/GUARANTOR}}}} (“Guarantor”). Mezz Lender further: (a) acknowledges, represents, and warrants that Mezz Lender has not transferred, assigned, pledged, or encumbered, or granted any security interest in, any interest in the \$ _____ *** loan by Mezz Lender to _____ *** (the “Mezz Loan”) or the documents evidencing or securing the Mezz Loan; (b) releases, and covenants not to assert, any and all claims Mezz Lender may otherwise have against Lender relating to the Loan, the Loan Documents, or the Property (as such terms are defined in the Agreement); and (c) acknowledges that the Intercreditor Agreement⁶ between the Lender and the Mezz Lender (the “Intercreditor Agreement”) remains in full force and effect and has not been modified or waived, except that any reference in the Intercreditor Agreement to Lender’s Loan Documents⁷ shall be deemed to be expanded to include the Agreement, the Amendment Documents, and the Loan Documents, as defined in the Agreement.

{{{100/MEZZ LENDER}}}}

By: _____

5 Omit this page if there is no mezzanine lender.

6 Revise, if necessary, to reflect the actual title of the Intercreditor Agreement.

7 Revise, if necessary, to reflect the actual definition in the Intercreditor Agreement of the Lender’s loan documents.

SCHEDULE A

DEFINITIONS⁸

The following terms, as used in this Agreement, shall have the following meanings:

“Affiliate”⁹ means:

(A) any entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of any Obligor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) any corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by any Obligor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of any Obligor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(C) any Person whose business is operated under a lease or operating agreement by an Obligor, or any person substantially all of whose property is operated under an operating agreement with any Obligor; or

(D) any entity that operates the business or substantially all of the property of any Obligor under a lease or operating agreement.

“Amendment Documents” means this Agreement and all other documents to be executed and/or delivered by any party arising out of, or in connection with, this Agreement or any other amendment to any of Loan Documents if such amendment is executed contemporaneously with this Agreement.

8 Define the following in Schedule A if they are not elsewhere defined in the Loan Agreement: “Affiliate,” “Default Rate,” “Event of Default,” “Letter of Credit” (note: if there is no Letter of Credit issued by the Lender, then search for and delete the provisions relating to the “Letter of Credit”), and “Permitted Exceptions.” Also, if any of the above definitions are more appropriately defined in any Loan Document, then delete the above definition and add a cross-reference to the appropriate Loan Document.

9 This definition is similar to the definition of “Affiliate” in the Bankruptcy Code, 11 U.S.C. § 101.

“Collateral” means 1) any and all real or personal property, tangible or intangible, of any Obligor, wherever located and whether now owned by any Obligor or hereafter acquired, and in all events all replacements, substitutions, profits, products, and Proceeds of the foregoing in any form and wherever located, 2) all books and records of each Obligor in whatever form maintained, 3) all funds of any Obligor on deposit with or under the control of (or subject to any security interest or lien in favor of) Lender or any of its agents or correspondents, and 4) all parts, replacements, substitutions, profits, products and cash and non-cash Proceeds of any of the foregoing (including insurance proceeds payable by reason of loss or damage thereto) in any form and wherever located. Collateral shall include all written or electronically recorded books and records relating to any such Collateral and other rights relating thereto. Notwithstanding the foregoing, from and after the release by Lender of any part of the Collateral as provided in this Agreement, such released part shall not constitute Collateral.

“herein,” “hereof,” “hereunder,” and “herewith” shall be deemed to refer to this entire Agreement and not any particular provision of this Agreement.

“Including” or “including” means “including, without limitation.”

“Indebtedness” of a Person means (a) indebtedness for borrowed money or for the deferred purchase price of property, goods or services, whether on open account or evidenced by a note, bond, debenture, chattel paper or similar instrument, (b) obligations under capital leases, (c) obligations for letters of credit, banker’s acceptances or other credit accommodations, (d) any direct, indirect, contingent or non-contingent guaranty or obligation for the indebtedness, liability or obligation of another Person, and (f) liabilities secured by any Lien on that Person’s property, even if that Person has not assumed such liabilities.

“Its” includes the meanings of “its,” “her” and “his.”

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, charge, claim, lien (statutory or other), or preference, priority or other security agreement or security interest or preferential arrangement of any kind or nature whatsoever, including, without limitation, any conditional sale or other title retention agreement, and any financing lease, and the filing of any UCC financing statement (to the extent any such financing statement purports to grant a security interest) or other notice of lien under the UCC or comparable law of any jurisdiction in respect of any of the foregoing.

“Loan Agreement Amendment” means the Loan Agreement Amendment substantially in the form attached hereto as Exhibit A.

“Loan Documents” has the meaning as set forth in the Recitals above.

“Note Amendment” means the Note Amendment substantially in the form attached hereto as Exhibit B.

“Obligations” means all of the all indebtedness, liabilities and obligations (monetary or otherwise) of any Borrower or any Guarantor to the Lender under any of the Loan Documents, whether in installments, at the stated maturity date, by acceleration or otherwise, including the principal of, interest on and all other sums due and payable under the Note and/or the other Loan Documents, and all existing and hereafter incurred or arising indebtedness, liabilities and obligations (monetary or otherwise) of any Borrower or any Guarantor to the Lender, whether absolute or contingent, disputed or undisputed, direct or indirect and out of whatever transactions arising, whether denominated as principal, interest, fees or otherwise.

“Person” means an individual, sole proprietorship, corporation, limited liability company, business trust, partnership, joint tenancy or tenancy-in-common, trust, unincorporated organization, or other entity, or a federal, state, local, or foreign government or any agency or political subdivision thereof.

“Proceeds” means all proceeds of the Collateral, including, without limitation,

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of any Collateral;

(B) whatever is collected on, or distributed on account of, any Collateral;

(C) rights arising out of any Collateral;

(D) to the extent of the value of the Collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the Collateral;

(E) to the extent of the value of the Collateral and to the extent payable to any Obligor or the Lender, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the Collateral; or

(F) all other “Proceeds” as defined in Section 9-102(a)(64) of “Revised Article 9. Secured Transactions” (ALI and NCCUSL 1999).

“Reorganization Proceeding” means a case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to any Person, or seeking to adjudicate such Person as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to such Person or such Person’s debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for such Person or for all or any substantial part of such Person’s assets, or the making of a general assignment for the benefit of such Person’s creditors.

“UCC” means the Uniform Commercial Code (ALI and NCCUSL 2005).

SCHEDULE B

Amounts Owning Under Loan Documents as of _____, 200__ ***

Amounts owed under Note:

Principal:	\$ _____
Interest (as of _____ ***):	\$ _____
Per Diem Interest (after _____ ***):	\$ _____
Late Charges:	\$ _____
Lender's Legal Fees:	\$ _____
Other Lender's Expenses:	\$ _____
Lender's Advances:	\$ _____
<u>Aggregate Current Balance</u> (as of _____ ***):	\$ _____

Amounts owed under Other Loan Documents:

\$ _____ ***

NOTE: The Lender reserves the right to require payment of all other amounts that may accrue on or after _____ *** pursuant to the Loan Documents, as well as all other amounts that are owed to the Lender pursuant to the Loan Documents. The Lender is not estopped from collecting amounts in addition to the foregoing amounts set forth in this Schedule, which is merely a summary prepared for the convenience of each Obligor.

SCHEDULE C

Liens and other Permitted Exceptions

Exhibit A

Loan Agreement Amendment

Exhibit B

Note Amendment

Exhibit C

Mortgage Amendment

Exhibit D

Assignment Amendment

Exhibit E

Security Agreement Amendment

Exhibit F

Reaffirmations of Guaranty

Exhibit G

Financing Statements

Exhibit H

Budget

Exhibit I
Closing Checklist

{{FORM OPTIONAL PROVISIONS**}}**

[BOYD NOTE: TO BE ADDED]