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NOTE AND MORTGAGE MODIFICATION, EXTENSION, SPREADER AND ASSUMPTION  
AGREEMENT

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DATE: As of June 1, 2011

MORTGAGOR: 160 Madison Avenue Owners Corp. and Claude Simon

MORTGAGEE: Intervest National Bank

ADDRESS OF  
PROPERTY: 160 Madison Avenue  
New York, New York

Block 862, Lot 20  
City of New York, County of New York

RECORD AND RETURN TO:

Intervest National Bank  
One Rockefeller Plaza, Suite 400  
New York, New York 10020-2002

**NOTE AND MORTGAGE MODIFICATION EXTENSION, SPREADER AND ASSUMPTION  
AGREEMENT**

THIS NOTE AND MORTGAGE MODIFICATION EXTENSION, SPREADER AND ASSUMPTION AGREEMENT (the "Agreement") made as of June 1, 2011 among 160 Madison Avenue Owners Corp, a New York corporation, having an address at 160 Madison Avenue, New York, New York 10016 ("Owners Corp") and Claude Simon, having an address at 160 Madison Avenue, New York, New York 10016 ("Simon") (Owners Corp and Simon being herein collectively referred to as, "Mortgagor") and Intervest National Bank having an address at One Rockefeller Plaza, Suite 400, New York, New York 10020-2002 ("Mortgagee").

**STATEMENT OF FACTS**

A. Owners Corp is the fee owner of the real property and improvements located at 160 Madison Avenue, New York, New York (the "Premises"), as such Premises are more particularly bounded and described on Schedule A attached hereto and made a part hereof.

B. Whereas, Simon is the owner of 100% of the Shares of Owners Corp;

C. Whereas, there is a proprietary lease for each of the floors of the Premises, and under each such proprietary lease, Owners Corp is the lessor and Simon is the lessee;

D. Whereas, there are various subleases (and various assignments of subleases) of the proprietary leases, and Simon is the sublessor under such subleases (the "Subleases");

E. Whereas, Mortgagee is the holder of the mortgage described on Schedule C annexed hereto and made a part hereof (the "Mortgage") which encumbers the Premises and of the mortgage note (the "Existing Note") secured by the Mortgage.

F. Whereas, Owners Corp and Mortgagee desire to modify certain terms and conditions of the Mortgage and the Existing Note, and Simon desires to assume the obligations thereunder to the extent and as hereinafter set forth.

**NOW, THEREFORE**, in pursuance of said agreement and in consideration of the mutual promises, covenants and agreements contained herein and in the Mortgage, and other valuable consideration, the receipt of which is hereby respectively acknowledged by the parties, Owners Corp, Mortgagee, and Simon mutually covenant and agree as follows:

1. Owners Corp hereby ratifies and confirms that, after the June 1, 2011 payment was made, the unpaid principal balance due under the Existing Note and secured by the Mortgage is One Million Four Hundred Fifty Eight Thousand Two Hundred Fifty Five and 05/100 (\$1,458,255.05) Dollars (the "Outstanding Principal Balance") and that interest has been paid through May 31, 2011.

2. The terms, covenants, conditions, warranties, representations and undertakings contained in the Mortgage are hereby incorporated herein by this reference as if set forth herein in their entirety. Simon hereby assumes the obligations of "Mortgagor" under the Mortgage and of maker under the Existing Note as herein and hereby modified to the end that Owners Corp and Simon shall collectively constitute the Mortgagor under the Mortgage and the maker under the Existing Note and shall be jointly and severally liable (subject to the provisions and of Section 10 hereof) for the obligations of Mortgagor under the Mortgage and maker under the Existing Note.

3. As of the date hereof, the Mortgage is hereby amended to substitute the annexed Schedule B (Payment of Indebtedness) for that existing therein.

4. The Existing Note is deemed amended to conform to the terms of Paragraph 3 above.

5. Prior to execution hereof, Owners Corp has paid to Mortgage the sum of \$14,819.00 for the extension of the maturity date of the Mortgage and the sum of \$8,500.00 as the Fee Payment due under the Mortgage in connection with this Agreement.

6. On or before, June 3, 2011, Mortgagor made a principal payment of \$10,000.00.

7. The lien of the Mortgage is hereby spread to encumber all of the rights and interests of Owners Corp and Simon in the proprietary leases, the leasehold estates, and any other rights and interests to rents, leases and all other sums payable (including maintenance charges) under the proprietary leases, the Subleases and occupancies. Mortgagor hereby assigns the proprietary leases, the Subleases, and any occupancies to Mortgagee under the terms and conditions of Paragraph 21 of the Mortgage. It is hereby ratified that the proprietary leases, the Subleases, and other occupancies and all income therefrom, were included in the Mortgaged Property under the Mortgage. Notwithstanding the foregoing, the lien of the Mortgage on the fee estate and on the Land and Building is not changed from the lien of the Mortgage as originally written, which is hereby confirmed.

8. As of the date hereof, the Fee Payment hereafter due shall be as follows:

A. If the Fee Payment Date is on or prior to October 1, 2011, zero (0%) percent;

B. If the Fee Payment Date is on or after October 2, 2011 and prior to January 1, 2012, one percent (1%) of the then outstanding principal balance;

C. If the Fee Payment Date is on or after January 1, 2012 and prior to January 1, 2013, five percent (5%) of the then outstanding principal balance;

D. If the Fee Payment Date is on or after January 1, 2013 and prior to January 1, 2014, four percent (4%) of the then outstanding principal balance;

E. If the Fee Payment Date is on or after January 1, 2014 and prior to January 1, 2015, three percent (3%) of the then outstanding principal balance;

F. If the Fee Payment Date is on or after January 1, 2015 and prior to January 1, 2016, two percent (2%) of the then outstanding principal balance;

G. If the Fee Payment Date is on or after January 1, 2016 (including after the stated Maturity Date), one percent (1%) of the then outstanding principal balance.

9. Claude Simon, in executing this instrument, also signifies that the Guaranty of Payment of Recourse Obligations, dated April 23, 2008, he executed simultaneously with the Mortgage remains in full force and effect.

10. (a) Notwithstanding anything to the contrary contained in the Mortgage (but subject to Paragraphs 10(b) and (c) below), in any action brought to enforce the obligation of Mortgagor to pay the indebtedness evidenced by the Existing Note or to enforce the obligations of Mortgagor created or arising under the Mortgage, the judgment or decree shall be enforceable against only the Mortgaged Property.

Mortgagee shall have no right to sue for, seek or demand any deficiency judgment or personal money judgment against (i) Mortgagor, any officer, director, shareholder, member, manager or principal of Mortgagor or any officer, director, shareholder or principal of a member or manager of Mortgagor, (ii) any partner of Mortgagor or any partner, officer, director or shareholder of Mortgagor's partners, or (iii) any legal representative, heir, legatee, successor or assignee of any of the foregoing, in any foreclosure action under or by reason of, or in connection with, the Mortgage. Any such judgment shall not be subject to execution on, or be a lien on, assets of any of the persons described in clauses (i) through (iii) above except to the extent of any such person's interest in the Mortgaged Property.

(b) The provisions of this Paragraph 10 shall not (i) prevent recourse to the Mortgaged Property, through the foreclosure or enforcement of any lien or security interest granted to Mortgagee under the Mortgage, (ii) limit or impair the rights of Mortgagee to apply Deposits, or to apply proceeds of insurance or condemnation under the Mortgage, to the payment of the obligations secured by the Mortgage, (iii) constitute a waiver, release or discharge of, or otherwise affect the obligation to pay, any indebtedness evidenced or secured by the Existing Note or the Mortgage, (iv) limit the right of any person to name Mortgagor or any transferee of an interest in the Mortgaged Property, or any tenant or occupant of the Premises, or any other person claiming an interest in or right to the Premises, as party defendant in any action or suit for judicial foreclosure, (v) limit the right of Mortgagee to exercise or seek against any person any equitable remedy (including specific performance and injunctive relief) so long as, subject to Paragraph 10(c) below, no judgment in the nature of a deficiency or personal money judgment shall be asked for, obtained or enforced against Mortgagor or any of the persons described in clauses (i) through (iii) of Paragraph 10(a) above, or (vi) limit the liability of, and the right of Mortgagee to obtain and enforce a personal judgment against, any person who shall have guaranteed either or both of payment and performance of any or all of the obligations evidenced or secured by the Existing Note or the Mortgage.

(c) The foregoing provisions of this Paragraph 10 shall in no way limit or otherwise affect the personal liability of Mortgagor and any other responsible person (including the other persons described in clauses (i) through (iii) of Paragraph 10(a) above) with respect to, and Mortgagor and any such responsible person shall be personally liable for the payment of (i) all security deposits of tenants under Leases, and any rents that are collected more than one month in advance, (ii) proceeds paid under any insurance policies by reason of damage, loss or destruction to any portion of the Mortgaged Property, or proceeds or awards resulting from the condemnation or other taking in lieu of condemnation of any portion of the Mortgaged Property, which are not applied in accordance with the terms of the Mortgage, (iii) any loss arising as a result of any violation of any Hazardous Substance Law, any amount for which Mortgagor has agreed to indemnify Mortgagee under Paragraph 9(f)(iii) of the Mortgage, and any loss arising as a result of any breach of a representation or covenant of Mortgagor under Paragraph 9(g) of the Mortgage, (iv) any loss resulting from the intentional or fraudulent commission of waste or omission of an action which results in waste to the Mortgaged Property, and (v) all costs, fees and expenses of enforcing payment of the obligations contained in clauses (i) through (iv) above, whether by litigation or otherwise. The scope of the obligations of the Mortgagor which were guaranteed by Claude Simon pursuant to the Guaranty ratified in paragraph 9 herein is the same as the scope of Mortgagor's obligations under this paragraph 10

11. All capitalized terms contained herein, except where otherwise herein defined, shall have the same meanings ascribed to them as are contained in the Mortgage and the Existing Note.

12. Except as hereby amended, all terms, covenants, conditions, warranties, representations and undertakings contained in the Mortgage and Note are hereby ratified and confirmed and continued in full force and effect.

13. Signatures hereon by telecopier or PDF shall be deemed originals for all purposes except for recording. The parties shall promptly deliver to each other original signatures on this Agreement.

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IN WITNESS WHEREOF, the Mortgagor and the Mortgagee have caused this instrument to be signed as of the day and year first above written.

MORTGAGOR:

160 MADISON AVENUE OWNERS CORP.

By: \_\_\_\_\_

Name: Claude Simon

Title: President

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Claude Simon

MORTGAGEE:

INTERVEST NATIONAL BANK

By: \_\_\_\_\_

Lowell S. Dansker, Chief Executive Officer

SCHEDULE A

Description of Land

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Madison Avenue distant 73 feet 11  $\frac{1}{2}$  inches northerly from the corner formed by the intersection of the westerly side of Madison Avenue and the northerly side of 32<sup>nd</sup> Street;

RUNNING THENCE Northerly along the westerly side of Madison Avenue 24 feet 7 inches;

THENCE Westerly part of the distance through a party wall 95 feet;

THENCE Southerly parallel with Madison Avenue 24 feet 7 inches;

THENCE Easterly parallel with 32<sup>nd</sup> Street and part of the distance through a party wall 95 feet to the westerly side of Madison Avenue to the point or place of BEGINNING.

## **SCHEDULE B**

### **Payment of Indebtedness**

The indebtedness evidenced by this Mortgage shall be payable as follows:

(a) (i) A payment of interest only calculated at the Interest Rate from April 25, 2008 to and including April 30, 2008 shall be due and payable upon the execution of this Mortgage; and

(ii) Commencing on June 1, 2008 and continuing thereafter on the first day of each calendar month to and including June 1, 2011, Mortgagor shall make payments of principal and interest of \$14,500.00. Commencing on July 1, 2011 and continuing on the first day of each calendar month to and including April 1, 2016, Mortgagor shall make payments of principal and interest of \$12,500.00.

Said payments shall be applied in accordance with the terms of this Mortgage. There shall be a final payment on May 1, 2016, on which date all outstanding principal, together with all accrued and unpaid interest, the Fee Payment, Additional Payments, and all other outstanding charges, shall be due and payable in full. The Fee Payment shall be due and payable on each and every Fee Payment Date which may arise under this Mortgage.

(b) The Interest Rate in effect shall be 6.125% per annum from the date hereof to and including the maturity date, stated or accelerated.

**SCHEDULE C**

Mortgage dated April 25, 2008 made by 160 Madison Avenue Owners Corp. to Intervest National Bank in the principal amount of \$1,700,000.00 and recorded on May 13, 2008 at CRFN 2008000191310 in the Office of the City Register of New York County (the "Register's Office").

STATE OF NEW YORK        )  
                              ) SS:  
COUNTY OF NEW YORK      )

On the \_\_\_\_ day of June, in the year 2011, before me, the undersigned, personally appeared Claude Simon personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

STATE OF NEW YORK        )  
                              ) SS:  
COUNTY OF NEW YORK      )

On the \_\_\_\_ day of June, in the year 2011, before me, the undersigned, personally appeared Lowell S. Dansker, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

**CLOSING STATEMENT OF MODIFICATION OF MORTGAGE**

DATE: As of June 1, 2011

PROPERTY: 160 Madison Avenue  
New York, New York

PRINCIPAL: \$1,458,255.05

MATURITY: May 1, 2016

**FUNDS RECEIVED PRIOR TO CLOSING:**

Intervest National Bank – Extension Fee	\$14,819.00
Intervest National Bank – Fee Payment	\$ 8,500.00
Phillips Nizer – Legal Fee	\$ 2,000.00
Intervest National Bank – Costs Deposit	\$ 4,200.00
Intervest National Bank – Principal Payment	\$10,000.00

**FUNDS TO BE RECEIVED AT CLOSING:**

Phillips Nizer - Disbursements	\$150.00
Continental Abstract Corp. – Recording Charges	\$150.00

APPROVED:  
160 Madison Avenue Corp.

By: \_\_\_\_\_  
Name: Claude Simon  
Title: President

\_\_\_\_\_  
Claude Simon

**AFFIDAVIT UNDER SECTION 255 TAX LAW**

STATE OF NEW YORK        )  
                                  ) SS:  
COUNTY OF NEW YORK    )

Claude Simon, being duly sworn, deposes and says:

- 1)        That I am the President of 160 Madison Avenue Owners Corp, the owner of premises 160 Madison Avenue, , New York, New York (the "Premises"), and I am fully familiar with the facts and circumstances set forth herein.
- 2)        That the Premises are encumbered by the Mortgage listed on Schedule C annexed hereto.
- 3)        That herewith being submitted for recording is a Note and Mortgage Modification Extension, Spreader and Assumption Agreement made by 160 Madison Avenue Owners Corp. and Claude Simon, as Mortgagor, to Intervest National Bank, as Mortgagee (the "Modification").
- 4)        That the Modification modifies the Mortgage listed on Schedule C. At the time of the recording of the Mortgage, the required mortgage taxes due on the Mortgage were paid.
- 5)        That the Modification does not create or secure any new or further indebtedness or obligation other than the principal indebtedness or obligation secured by or which under any contingency may be secured by the Mortgage, nor does it constitute a re-advance or re-loan under the Mortgage.

**WHEREFORE**, deponent respectfully requests that the Mortgage Modification Agreement herewith offered for recording be declared exempt from taxation pursuant to the provisions of Section 255, Article 11 of the Tax Law.

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Claude Simon

Sworn to before me this  
\_\_\_\_ day of June, 2011

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Notary Public

**SCHEDULE C**

Mortgage dated April 25, 2008 made by 160 Madison Avenue Owners Corp. to Intervest National Bank in the principal amount of \$1,700,000.00 and recorded on May 13, 2008 at CRFN 2008000191310 in the Office of the City Register of New York County (the "Register's Office").