

INDIANA

2006 047507

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2006 JUN -5 AM 11:32

MICHAEL A. BROWN  
RECORDER

*This space reserved for Recorder's use only*

10

**FOURTH MODIFICATION OF LOAN DOCUMENTS**

**THIS FOURTH MODIFICATION OF LOAN DOCUMENTS** (this "Modification") is made as of the 26<sup>th</sup> day of May, 2006, by and between BUCKO CONSTRUCTION CO., INC., an Indiana corporation ("Mortgagor"), and AMERIMARK BANK, an Illinois banking corporation ("Mortgagee").

**RECITALS:**

A. Mortgagee has heretofore made certain loans and/or extensions of credit (collectively, the "Bucko Jr. Loans") to Robert J. Bucko Jr. ("Bucko Jr.") as evidenced by that certain Amended and Restated Promissory Note dated as of December 21, 2004 made by Bucko Jr. in favor of Mortgagee in the original principal amount of \$1,736,493.37, as amended and restated by that certain Second Amended and Restated Promissory Note dated as of April 20, 2005 (the "Second Amended Note") made by Bucko Jr. in favor of Mortgagee in the principal amount of \$1,330,000 (together, as it may be further amended, restated, modified or supplemented and in effect from time to time, the "Bucko Jr. Note", and together with the Bucko Jr. Security Agreement (as defined below), the Bucko Guaranty (as defined below), the Bucko Security Agreement (as defined below), the First Amendment (as defined below), the Chase Street Mortgage (as defined below), the Chase Street Environmental Indemnity Agreement (as defined below), the First Modification for Chase Street (as defined below), the Additional Bucko Jr. Documents (as defined below) and all other instruments and documents executed in connection therewith, in their original form and as amended, collectively, the "Bucko Jr. Loan Documents").

B. Mortgagee has heretofore made certain loans and/or extensions of credit to Mortgagor (collectively, and together with Term Loan B (as defined below) and the Temporary

**This document prepared by and after recording return to:**

Diana Y. Tsai, Esq.  
Schwartz Cooper Chartered  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601

365906.1 043094-34811

**Permanent Index Numbers:**

25-40-0037-0023  
25-40-0037-0014

**Address of Property:**

890 Chase Street  
Gary, Indiana 46404

36-  
LP  
ek  
3049

Revolving Loan (as defined below), the "Bucko Loans"), pursuant to that certain Loan and Security Agreement dated as of February 25, 2005 by and between Mortgagor and Mortgagee (as amended, restated, modified or supplemented and in effect from time to time, the "Loan Agreement"), which Bucko Loans are evidenced by that certain Term Note dated as of February 25, 2005 made by Mortgagor in favor of Mortgagee in the original principal amount of \$2,400,000 (as amended, restated, modified or supplemented and in effect from time to time, the "Term Note"), and that certain Revolving Note dated as of February 25, 2005 made by Mortgagor in favor of Mortgagee in the original principal amount of \$1,300,000 (as amended, restated, modified or supplemented and in effect from time to time, the "Revolving Note", and together with the Term Note, Term Note B (as defined below) and the Temporary Revolving Note (as defined below), collectively, the "Bucko Notes", and the Bucko Notes, together with this Mortgage, the Loan Agreement, the Bucko Jr. Guaranty (as defined below), the Michigan Street Environmental Indemnity Agreement (as defined below), the Additional Chase Street Environmental Indemnity Agreement (as defined below), the Assignment of Life Insurance Policy (as defined below), the Cross-Collateralization and Cross-Default Agreement (as defined below), the Additional Bucko Documents (as defined below) and all other instruments and documents executed in connection therewith, in their original form and as amended, collectively, the "Bucko Loan Documents", and together with the Bucko Jr. Loan Documents, collectively, the "Loan Documents").

C. In connection with the Bucko Jr. Loans, (a) Bucko Jr. has heretofore entered into that certain Amended and Restated Security Agreement dated as of December 21, 2004 by and between Bucko Jr. and Mortgagee (as amended, restated, modified or supplemented and in effect from time to time, the "Bucko Jr. Security Agreement"), and (b) Mortgagor has heretofore entered into (i) that certain Continuing Unconditional Guaranty dated as of December 21, 2004 made by Mortgagor in favor of Mortgagee (as amended, restated, modified or supplemented and in effect from time to time, the "Bucko Guaranty"), pursuant to which Mortgagor is guaranteeing the Bucko Jr. Loans, (ii) that certain Security Agreement dated as of December 21, 2004 by and between Mortgagor and Mortgagee (as amended, restated, modified or supplemented and in effect from time to time, the "Bucko Security Agreement"), pursuant to which Mortgagor granted to Mortgagee a security interest in and lien on all of the Equipment of Mortgagor to secure the obligations and performance of Bucko Jr. under the Bucko Jr. Loans, (iii) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of December 21, 2004 made by Mortgagor in favor of Mortgagee with respect to certain real property located at 890 Chase Street, Gary, Indiana 46404 and legally described on Exhibit A hereto (the "Chase Street Property") and recorded with the Lake County Recorder's Office of the State of Indiana (the "Recorder's Office") on February 16, 2005 as Document No. 2005 011509 (as amended, restated, modified or supplemented and in effect from time to time, the "Chase Street Mortgage"), pursuant to which Mortgagor is securing the obligations and performance of Bucko Jr. under the Bucko Jr. Loans, and (iv) that certain Environmental Indemnity Agreement dated as of December 21, 2004 made by Mortgagor in favor of Mortgagee with respect to the Chase Street Property (as amended, restated, modified or supplemented and in effect from time to time, the "Chase Street Environmental Indemnity Agreement"), pursuant to which Mortgagor is indemnifying Mortgagee with respect to environmental conditions and operations at such property.

D. In connection with the Bucko Loans, (a) Mortgagor has heretofore entered into (i) the Loan Agreement, (ii) the Bucko Notes, (iii) that certain First Amendment to Security Agreement dated as of February 25, 2005 by and between Mortgagor and Mortgagee (the "First Amendment"), which amends the Bucko Security Agreement, (iv) that certain First Modification of Loan Documents dated as of February 25, 2005 by and between Mortgagor and Mortgagee with respect to the Chase Street Property and recorded with the Recorder's Office on March 18, 2005 as Document No. 2005 021203 (the "First Modification for Chase Street"), (v) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of February 25, 2005 made by Mortgagor in favor of Mortgagee with respect to certain real property located at 1501 Michigan Street, Gary, Indiana 46402 (the "Michigan Street Property") and recorded with the Recorder's Office on April 19, 2005 as Document No. 2005 030982 (as amended, restated, modified or supplemented and in effect from time to time, the "Michigan Street Mortgage"), pursuant to which Mortgagor is securing the obligations and performance of Mortgagor under the Bucko Loans, (vi) that certain Environmental Indemnity Agreement dated as of February 25, 2005 made by Mortgagor and Bucko Jr. in favor of Mortgagee with respect to the Michigan Street Property (as amended, restated, modified or supplemented and in effect from time to time, the "Michigan Street Environmental Indemnity Agreement"), pursuant to which Mortgagor and Bucko Jr. are indemnifying Mortgagee with respect to environmental conditions and operations at such property, (vii) that certain Assignment of Life Insurance Policy as Collateral Security dated as of February 25, 2005 by and among Bucko Jr., Mortgagee and Protective Life Insurance Company (as amended, restated, modified or supplemented and in effect from time to time, the "Assignment of Life Insurance Policy"), and (viii) that certain that certain Cross-Collateralization and Cross-Default Agreement dated as of February 25, 2005 by and among Mortgagor, Bucko Jr. and Mortgagee (as amended, restated, modified or supplemented and in effect from time to time, the "Cross-Collateralization and Cross-Default Agreement"), and (b) Bucko Jr. has heretofore entered into (i) that certain Continuing Unconditional Guaranty dated as of February 25, 2005 made by Bucko Jr. in favor of Mortgagee (as amended, restated, modified or supplemented and in effect from time to time, the "Bucko Jr. Guaranty"), pursuant to which Bucko Jr. is guaranteeing the Bucko Loans, (ii) that certain Environmental Indemnity Agreement dated as of February 25, 2005 made by Bucko Jr. in favor of Mortgagee with respect to the Chase Street Property (as amended, restated, modified or supplemented and in effect from time to time, the "Additional Chase Street Environmental Indemnity Agreement"), pursuant to which Bucko Jr. is indemnifying Mortgagee with respect to environmental conditions and operations at such property, (iii) the Michigan Street Environmental Indemnity Agreement and (iv) the Cross-Collateralization and Cross-Default Agreement.

E. Mortgagor has heretofore entered into that certain First Amendment to Loan and Security Agreement and Other Loan Documents dated as of April 20, 2005 (the "First Amendment to Bucko Loan Agreement") pursuant to which, among other things, Mortgagee made a new term loan ("Term Loan B") to Mortgagor in the original principal amount of \$3,455,000, as evidenced by that certain Term Note B dated as of April 20, 2005 made by Mortgagor in favor of Mortgagee in the principal amount of \$3,455,000 (as amended, restated, modified or supplemented and in effect from time to time, "Term Note B"), and in connection therewith, entered into (i) that certain Second Modification of Loan Documents dated as of April 20, 2005 by and between Mortgagor and Mortgagee with respect to the Chase Street Property and recorded with the Recorder's Office on April 28, 2005 as Document No. 2005 034239 (the



“Second Modification for Chase Street”), (ii) that certain First Modification of Loan Documents dated as of April 20, 2006 by and between Mortgagor and Mortgagee with respect to the Michigan Street Property and recorded with the Recorder’s Office on April 28, 2005 as Document No. 2005 034236 (the “First Modification of Michigan Street”), and (iii) certain other documents in connection with the First Amendment to Bucko Loan Agreement.

F. Mortgagor has heretofore entered into that certain Second Amendment to Loan and Security Agreement and Other Loan Documents and Waiver dated as of March 22, 2006 (the “Second Amendment to Bucko Loan Agreement”) pursuant to which, among other things, Mortgagee made a new revolving loan (the “Temporary Revolving Loan”) to Mortgagor in the original principal amount of \$1,500,000, as evidenced by that certain Revolving Note dated as of March 22, 2006 made by Mortgagor in favor of Mortgagee in the principal amount of \$1,500,000 (as amended, restated, modified or supplemented and in effect from time to time, the “Temporary Revolving Note”), and in connection therewith, entered into (i) that certain Third Modification of Loan Documents dated as of March 22, 2006 by and between Mortgagor and Mortgagee and recorded with the Recorder’s Office on March 29, 2006 as Document No. 2006 025733 (the “Third Modification for Chase Street”), (ii) that certain Second Modification of Loan Documents dated as of March 22, 2006 by and between Mortgagor and Mortgagee and recorded with the Recorder’s Office on March 29, 2006 as Document No. 2006 025732 (the “Second Modification for Michigan Street”), and (iii) certain other documents in connection with the Second Amendment to Bucko Loan Agreement.

G. Concurrently herewith, in addition to this Modification, Mortgagor is entering into (i) that certain Third Amendment to Loan and Security Agreement and Other Loan Documents dated as of even date herewith (the “Third Amendment to Bucko Loan Agreement”) pursuant to which, among other things, the maximum principal amount of the Revolving Loans is being increased to \$3,000,000, all as more fully set forth therein, (ii) that certain Third Modification of Loan Documents dated as of even date herewith by and between Mortgagor and Mortgagee with respect to the Michigan Street Property, and (iii) certain other documents in connection with the Third Amendment to Bucko Loan Agreement.

F. Mortgagor desires to amend the Chase Street Mortgage and the Chase Street Environmental Indemnity Agreement to, among other things, provide that they secure the Bucko Jr. Loans and the Bucko Loans, including without limitation, the increased maximum principal amount of the Revolving Loans.

**AGREEMENTS:**

**NOW, THEREFORE,** in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Modification), (ii) the agreements by Mortgagee to modify the Bucko Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Capitalized Terms.** Capitalized terms used in this Modification and not otherwise defined herein are used with the meanings given such terms in the Loan Agreement.

2. **Loans Secured.** The Chase Street Mortgage and the Chase Street Environmental Indemnity Agreement are hereby modified to provide that they secure (i) all indebtedness owing and owed by Bucko Jr. to Mortgagee (including, without limitation, the Bucko Jr. Loans), as evidenced by the Bucko Jr. Note, (ii) all Obligations owing and owed by Bucko Jr. to Mortgagee, (iii) all indebtedness owing and owed by Bucko to Mortgagee (including, without limitation, the Bucko Loans, as evidenced by the Bucko Notes, and (iv) all Obligations (as defined in the Bucko Notes) owing and owed by Bucko to Mortgagee.

3. **Additional Amendments to Chase Street Mortgage and First Modification.**

(a) The Chase Street Mortgage is hereby amended by deleting the reference to "\$19,602,000" in subsection 33(j) and replacing it with "\$21,602,000".

4. **Representations and Warranties of Mortgagor.** Mortgagor hereby represents, covenants and warrants to Mortgagee as follows:

(a) The representations and warranties in the Chase Street Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Chase Street Mortgage) under the Chase Street Mortgage, any of the other Loan Documents and Mortgagor does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute a Default or an Event of Default under the Chase Street Mortgage or any of the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Modification, they continue to be the legal, valid and binding obligations of Mortgagor, as applicable, enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Mortgagor or any other party whose financial statement has been delivered to Mortgagee in connection with the Bucko Loans or the Bucko Jr. Loans from the date of the most recent financial statement received by Mortgagee.

(e) As of the date hereof, Mortgagor has no claims, counterclaims, defenses, or set-offs with respect to the Bucko Loans, the Bucko Jr. Loans, the Bucko Loan Documents or the Bucko Jr. Loan Documents.

(f) Mortgagor is validly existing under the laws of the State of its incorporation and has the requisite power and authority to execute and deliver this Modification and to perform the Loan Documents as modified herein. The execution and delivery of this Modification and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Mortgagor. This Modification has been duly executed and delivered on behalf of Mortgagor.

5. **Title Policy.** As a condition precedent to the agreements contained herein, Mortgagor shall, at its sole cost and expense, cause Professionals' Title Services, LLC to issue an

endorsement to Lender's Title Insurance (the "Title Policy"), as of the date this Modification is recorded, reflecting the recording of this Modification and insuring the first priority of the lien of the Chase Street Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Mortgagee.

6. **Expenses.** As a condition precedent to the agreements contained herein, Mortgagor shall pay all out-of-pocket costs and expenses incurred by Mortgagee in connection with this Modification, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

7. **Miscellaneous.**

(a) This Modification shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Modification shall not be construed more strictly against Mortgagee than against Mortgagor merely by virtue of the fact that the same has been prepared by counsel for Mortgagee, it being recognized that Mortgagor and Mortgagee have contributed substantially and materially to the preparation of this Modification, and Mortgagor and Mortgagee each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Modification. Each of the parties to this Modification represents that it has been advised by its respective counsel of the legal and practical effect of this Modification, and recognizes that it is executing and delivering this Modification, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Modification, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Modification by Mortgagee, the same shall not be deemed to constitute Mortgagee a venturer or partner of or in any way associated with Mortgagor nor shall privity of contract be presumed to have been established with any third party.

(d) Mortgagor and Mortgagee each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Modification, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Mortgagor and Mortgagee; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Modification. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Modification shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the “Notes”, the “Mortgage” or the “Loan Documents” contained in any of the Loan Documents shall be deemed to refer to the Bucko Notes, the Bucko Jr. Note, the Chase Street Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Modification may be executed in one or more counterparts, all of which, when taken together, shall constitute one original agreement.

(h) Time is of the essence of each of Mortgagor’s obligations under this Modification.

*[Remainder of page intentionally left blank; signature page follows]*



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

**MORTGAGEE:**

**BUCKO CONSTRUCTION CO., INC.**

By: \_\_\_\_\_  
Name: Robert J. Bucko, Jr.  
Title: President

**MORTGAGOR:**

**AMERIMARK BANK**

By: \_\_\_\_\_  
Name: Michael E. Braw  
Title: President





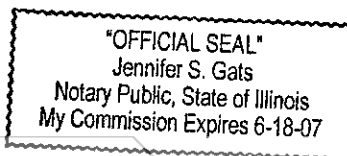
STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

I Jennifer S. Gats, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael C. Blawn, the President of AmeriMark Bank, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he or she signed and delivered said instrument as his or her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26 day of May, 2006.

Jennifer S. Gats  
Notary Public

My Commission Expires: 6-18-07



Indiana  
STATE OF ~~ILLINOIS~~ )  
 ) .ss  
COUNTY OF Lake )

Document is NOT OFFICIAL!

I Amy Henningfield, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Robert J. Bucko, Jr., the President of Bucko Construction Co., an Indiana corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of May, 2006.

Amy L. Henningfield  
Notary Public

My Commission Expires: April 13, 2009



AMY L. HENNINGFIELD  
Notary Public, State of Indiana  
Resident of Lake County, Indiana  
Commission Expires April 13, 2009

**EXHIBIT A**

**THE PROPERTY**

A PART OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 36 NORTH, RANGE 8, WEST OF THE SECOND PRINCIPAL MERIDIAN DESCRIBED AS BEING 13.18 ACRES OF LAND LYING SOUTH OF THE SOUTH LINE OF 100-FOOT WIDE GARY AND WESTERN RAILWAY WHICH IS MEASURED 2650.73 FEET MORE OR LESS, EAST-WEST; AND RUNNING THENCE WESTERLY FROM THE CENTERLINE OF CHASE STREET ALONG THE SOUTH LINE OF 100-FOOT WIDE GARY AND WESTERN RAILROAD, 2650.73 FEET TO A STRAIGHT LINE THAT IS A PROJECTION OF THE STRAIGHT LINE OF WHITCOMB STREET; THENCE SOUTH ON THE PROJECTION LINE OF WHITCOMB STREET A DISTANCE OF 165.26 FEET TO THE NORTH LINE OF 100-FOOT WIDE MICHIGAN CENTRAL RAILWAY, NOW KNOWN AS CONRAIL, THE 2 TRACKS HAVE REDUCED TO A SINGLE TRACK BY ABANDONMENT OF THE SOUTH SET OF RAILS, LEAVING THE DISTANCE FROM THE NORTH LINE OF THE 100-WIDE RIGHT-A-WAY TO THE TRACK OF 37.0 FEET AND 63.0 FEET SOUTH OF THE TRACK; THE DISTANCE FROM THE CENTERLINE OF WHITCOMB TO THE CENTERLINE OF CHASE MEASURES 2652.0 FEET, MORE OR LESS; THENCE NORTH ON THE CENTERLINE OF CHASE 278.2 FEET TO CONTAIN 13.18 ACRES OF LAND CLEAR OF BOTH RAILROAD'S 100-FOOT WIDE RIGHT-OF-WAYS.

Common Address: 890 Chase Street,  
Gary, Indiana 46404

