

THIS DOCUMENT PREPARED BY:

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0021148774

2451/0066 18 001 Page 1 of 13
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Cook County Recorder 48.00

KRWR File No. 07995.01800



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SECOND MODIFICATION OF LOAN DOCUMENTS

13

THIS SECOND MODIFICATION OF LOAN DOCUMENTS ("Modification") is made and entered into as of the 21st day of October, 2002 ("**Effective Date**"), by and among **RICHARD CARLSON** and **PHYLLIS CARLSON**, as Co-Trustees of the CARLSON FAMILY TRUST Under Trust Agreement dated December 18, 1992 ("**Borrower**"); **FRANK O. CARLSON & CO., INC.**, an Illinois corporation ("**Carlson, Inc.**"); **DAVID A. CARLSON** ("**D. Carlson**"); and **MB FINANCIAL BANK, N.A.**, formerly known as Manufacturers Bank ("**Lender**").

RECITALS:

A. As of the Effective Date, Borrower is indebted to Lender in the principal sum of ONE MILLION THREE HUNDRED NINETY THOUSAND AND NO/100 DOLLARS (\$1,390,000.00), which indebtedness ("**Loan**") is evidenced by that certain Consolidated, Amended and Restated Promissory Note dated September 24, 2002 ("**Note**") executed by Borrower in said amount and delivered to Lender.

B. The Loan is guaranteed by D. Carlson and Carlson, Inc (collectively the "**Guarantors**") pursuant to: (i) a Guaranty of Note 1 dated July 18, 2000 executed by D. Carlson; (ii) a Commercial Guaranty dated June 14, 2000 executed by D. Carlson; and (iii) a Modification of Loan Documents dated September 24, 2002 executed by Borrower, Guarantors and Lender and recorded on October ____, 2002 as Document No. 21148774 ("**Modification**").

C. The Loan is secured by the following:

- (i) Mortgage, Assignment of Leases and Security Agreement 1 dated July 18, 2000 executed by Borrower in favor of Lender and recorded on July 31, 2000 in the Recorder's Office of Cook County, Illinois as Document No. 00575289, as amended by the Modification ("**Mortgage 1**"); and

BOX 333-CT

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- (ii) Assignment of Leases, Rents and Profits dated July 18, 2000 executed by Borrower in favor of Lender and recorded July 31, 2000 in the Recorder's office of Cook County, Illinois as Document No. 00575290, as amended by the Modification ("**Assignment 1**").
- (iii) Second Mortgage dated July 18, 2000 executed by Borrower in favor of Lender and recorded on July 31, 2000 in the Recorder's Office of Cook county as Document No. 00575291, as amended by the Modification ("**Mortgage 2**"); and
- (iv) Assignment of Rents dated July 18, 2000 executed by Borrower in favor of Lender and recorded on July 31, 2000 in the Recorder's Office of Cook county as Document No. 00575292, as amended by the Modification ("**Assignment 2**")

D. Mortgage 1 and Mortgage 2 (collectively, the "**Mortgages**") constitute valid first and second liens on the real property located at 1001 East 99th Street, Chicago, Illinois, which property is legally described on Exhibit A attached hereto ("**Property**").

E. The Loan is further evidenced and secured by the other documents described on Exhibit B attached hereto (said documents on said Exhibit B, together with the Note, Guaranties, Mortgages, Assignment 1, Assignment 2, and the Modification being collectively, the "**Loan Documents**").

F. The outstanding principal balance of the Note as of the date hereof is ONE MILLION THREE HUNDRED NINETY THOUSAND AND NO/100 DOLLARS (\$1,390,000.00).

G. Borrower has requested that Lender advance an additional NINETY-THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$93,500.00) ("**Additional Advance**") to enable Borrower to acquire, through payment of delinquent real estate taxes and the first and second installments of 2001 taxes, the real property and improvements located adjacent to the Property at 1051 East 99th Place, Chicago, Illinois, which adjacent Property is legally described in Exhibit C attached hereto ("**Adjacent Property**").

H. Lender is willing to make the Additional Advance provided that: (i) the Loan Documents are and modified to increase the amount of the Loan by the amount of the Additional Advance; (ii) the Adjacent Property is added to the Property covered by the liens of the Mortgages and the other Loan Documents; and (iii) Borrower and Guarantors (collectively, the "**Obligors**") comply with all other conditions precedent provided thereto as set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements hereinafter set forth, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Obligors and Lender hereby mutually agree as follows:

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1. **Incorporation by Reference.** The foregoing Recitals are hereby incorporated herein by reference as if set forth in full in the body of this Modification.

2. **Additional Advance.** Lender agrees to disburse the Additional Advance upon satisfaction of all conditions precedent thereto set forth herein.

3. **Modifications of Loan Documents.** The Loan Documents are hereby amended as follows, effective as of the Effective Date:

(a) The principal amount of the Loan is hereby increased by the amount of the Additional Advance to One Million Four Hundred Eighty-Three Thousand Five Hundred and No/100 Dollars (\$1,483,500.00), and all references in the Loan Documents to the principal amount of the Note shall be deemed to refer to One Million Four Hundred Eighty-Three Thousand Five Hundred and No/100 Dollars (\$1,483,500.00).

(b) Upon acquisition of the Adjacent Property, the Property shall be subject the liens of the Mortgages, and all references in the Loan Documents to the Property shall be deemed to include the Adjacent Property (when acquired) and all property now owned or hereafter acquired by Borrower.

(c) The Additional Advance shall be secured by the Mortgages and all other collateral in the other Loan Documents.

(d) All modifications to the Loan reflected herein are hereby incorporated by reference into the Loan Documents, and to the extent the provisions hereof conflict or are inconsistent with those of the Loan Documents, the provisions hereof shall be controlling and shall be deemed to supersede such provisions in the Loan Documents;

(e) Lender shall have no obligation whatsoever to make any further disbursements of the Loan in excess of One Million Four Hundred Eighty-Three Thousand Five Hundred and No/100 Dollars (\$1,483,500.00);

(f) The Loan shall be secured by the Mortgages and the Loan Documents, as modified by the Modification and this Modification;

(g) All references in the Loan Documents to any other Loan Document shall be deemed to refer to such Loan Document as modified by this Modification.

4. **Consent of Guarantors.** Guarantors (A) have received and reviewed this Modification and all documents and instruments in connection herewith, (B) hereby consent to the execution and delivery hereof, and (C) agree that their duties, liabilities and obligations under the Guaranties shall not in any manner be impaired, discharged or released by the execution and delivery of this Modification and all documents or instruments in connection herewith.

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5. **Reaffirmation of Obligations.**

(a) The Obligors hereby acknowledge and reaffirm their obligations under the Loan Documents and the indebtedness evidenced thereby, and acknowledge and agree that such indebtedness is owing to Lender and is enforceable against the Obligors in accordance with the terms of the Loan Documents as modified, amended and extended by this Modification, subject to no defenses, counterclaims, deductions or set-offs whatsoever.

(b) Nothing contained in this Modification, or the transactions contemplated hereby, shall be deemed or construed to be a consent to or a waiver of any breach or default in the performance by the Obligors of their respective obligations to Lender, whether evidenced by the Loan Documents or otherwise, nor shall Lender be impaired or limited in its ability to fully and completely enforce any and all the rights and remedies presently available to Lender under the Loan Documents for a breach of any Obligor's obligations as required by the Loan Documents as may exist at the Effective Date.

6. **Reaffirmation of Representations and Warranties.** The Obligors hereby acknowledge and reaffirm that all the representations and warranties of the Obligors as stated in the Original Loan Documents are true and correct in all material respects as of the Execution Date.

7. **Offsets and Defenses.** The Obligors hereby acknowledge and agree that: (A) as of the date of this Modification, there are no offsets, defenses or counterclaims against Lender arising out of or in any way relating to the Loan Documents; (B) they release and forever discharge, and indemnify and hold harmless Lender, its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors and assigns and all persons, firms, corporations and organizations acting or who have acted in its behalf of and from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which they or any of them may now have or claim to have against Lender or any of the other persons or entities described in this clause (B) as of the date of this Modification, and whether presently known or unknown, and of every nature and extent whatsoever on account of or in any way touching, concerning, arising out of or founded upon the Loan Documents, and (C) Lender is not in default under the Loan Documents and has fulfilled any and all of Lender's obligations under the Loan Documents to date.

8. **Intent of Parties.** The parties expressly agree that the liens evidenced and granted by the Loan Documents shall be in no way deemed to have been subordinated, released, modified, terminated, or otherwise affected by this Modification, it being understood by the parties hereto that the liens of said documents shall continue in full force and effect, and are to have the same validity, priority and effect that they had immediately prior to the execution of this Modification and the documents and instruments executed and delivered pursuant to this Modification, and shall survive and not be merged into the execution and delivery of this Modification or any of the documents and instruments to be executed pursuant to this Modification, without interruption.

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9. **Guarantors Not Insolvent.** Guarantors hereby represent and warrant to Lender that Guarantors are currently solvent and generally paying their debts as they become due and payable. Guarantors further represent and warrant that they own property which, at fair valuation, is greater than the sum of their debts.
10. **No Third Party Beneficiaries.** This Modification is made and entered into for the sole protection and benefit of the Lender, Borrower and Guarantors, and no other person, entity or entities shall have the right of action hereon, right to claim any right or benefit from the terms contained herein or be deemed a third party beneficiary hereunder.
11. **Conflicts.** The provisions of this Modification shall govern and control in the event of any conflict between this Modification and the provisions of any of the Loan Documents.
12. **Entire Agreement.** Except as expressly set forth herein, this Modification, the Note, and the Loan Documents constitute the entire agreement of the parties hereto with respect to the matters addressed herein, and supersede all prior or contemporaneous contracts, representations, statements and warranties, whether oral or written, with respect to such matters.
13. **Successors and Assigns; Assignability.** This Modification shall be binding upon and inure to the benefit of the parties hereto, their respective successors, legal representatives and assigns; provided, however, that no Obligor may assign its rights under the Loan Documents or this Modification.
14. **Effect of Modification.** Except as specifically amended or modified by the terms of this Modification, all terms and provisions of each of the Loan Documents shall remain in full force and effect. Lender's agreement to modify the Loans and the Loan Documents as set forth herein shall not be interpreted or construed as obligating Lender to make any future modifications to or extensions of the Loan.
15. **Governing Law.** This Modification shall be governed by and be construed in accordance with the internal laws of the State of Illinois.
16. **Captions.** The title of this Modification and the headings of the various paragraphs of this Modification have been inserted only for the purposes of convenience and are not part of this Modification and should not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Modification.
17. **Attorneys' Fees, Costs and Expenses.** In any action or proceeding arising out of this Modification, Lender shall be entitled to recover from the Obligor the reasonable attorneys' fees, court costs, filing fees, publication costs and other expenses incurred by Lender in connection therewith.

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18. **Further Assurances.** The parties hereto and each of them agree to execute from time to time any and all documents reasonably requested by the others to carry out the intent of this Modification.

19. **Counterparts and Execution.** This Modification may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. However, this Modification shall not be binding on any party until all the parties hereto have executed this document, either all on one document or in counterparts, it being intended that if such execution by all the parties shall not occur or be satisfied, as applicable, then no party shall be bound by this Modification.

20. **Conditions Precedent.** As conditions precedent to this Modification, the Obligors shall provide Lender with a date loan endorsement to its title policy, payment of all reasonable expenses in connection with the items described herein, and such other matters as Lender may reasonably require.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK;
SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have executed this Modification on the day first above written.

BORROWER:



RICHARD CARLSON



PHYLLIS CARLSON

Not personally, but as Co-Trustees of the
Carlson Family Trust as aforesaid

CARLSON, INC.:

FRANK O. CARLSON & CO., INC.,
an Illinois corporation

By: 

Name: **DAVID A. CARLSON**
Title: **PRESIDENT**

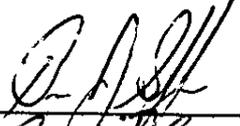
D. CARLSON:



DAVID A. CARLSON

LENDER:

MB FINANCIAL BANK, N.A.

By: 

Name: **Daniel J. Griffin**
Title: **SVP**

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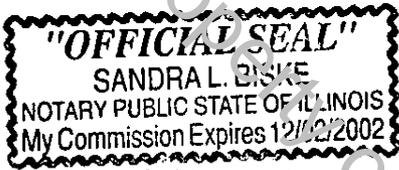
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, SANDRA L. BISKE, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that BRIAN J. GRIFFIN, as SVP of MB FINANCIAL BANK, N.A., a national banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such SVP of said Bank, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 8th day of October, 2002.

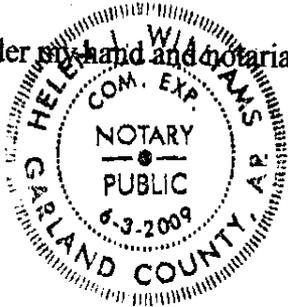


Sandra L. Biske
Notary Public

STATE OF ~~ILLINOIS~~ ARKANSAS)
) SS
COUNTY OF ~~COOK~~ GARLAND)

I, Helen J. Williams, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that RICHARD CARLSON, as Co-Trustee as aforesaid, appeared before me this day in person and acknowledged that he signed and sealed the said instrument as his own free and voluntary act as such Co-Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 4th day of October, 2002.



Helen J. Williams
Notary Public

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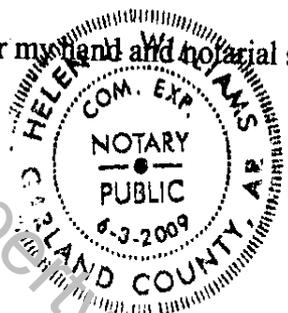
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STATE OF ~~ILLINOIS~~ ^{ARKANSAS})
COUNTY OF ~~COOK~~ ^{GARLAND}) SS

I, Helen J Williams, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that PHYLLIS CARLSON, as Co-Trustee as aforesaid appeared before me this day in person and acknowledged that she signed and sealed the said instrument as her own free and voluntary act as such Co-Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 4th day of October, 2002.



Helen J Williams
Notary Public

STATE OF ILLINOIS)
COUNTY OF COOK) SS

I, Sandra L. Biske, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DAVID A. CARLSON, as PRESIDENT of FRANK O. CARLSON & CO., INC., an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such PRESIDENT of said Corporation, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 8th day of October, 2002.



Sandra L. Biske
Notary Public

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, SANDRA L. BISKE, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DAVID A. CARLSON appeared before me this day in person and acknowledged that he signed and sealed the 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 8TH day of October, 2002.



Sandra L. Biske
Notary Public

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PARCEL 1:

THE SOUTH 314.83 FEET OF THE NORTH 324.83 FEET OF THE WEST 560.00 FEET OF THAT PART OF THE SOUTH 1/2 OF SECTION 11, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF A LINE DRAWN PERPENDICULARLY TO THE NORTH LINE OF SAID SOUTH 1/2 THROUGH A POINT WHICH IS 980.00 FEET EAST OF THE EASTERLY LINE OF SOUTH COTTAGE GROVE AVENUE (980.00 FEET WIDE) AS MEASURED ALONG A LINE 60.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE SOUTH EAST 1/4 OF SECTION 10 AND ALONG A LINE 60.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE SOUTH 1/2 OF SECTION 11, ALL IN TOWNSHIP AND RANGE AFORESAID, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE NORTH 10.00 FEET OF THE WEST 560.00 FEET OF THAT PART OF THE SOUTH 1/2 OF SECTION 11, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF A LINE DRAWN PERPENDICULARLY TO THE NORTH LINE OF SAID SOUTH 1/2 THROUGH A POINT WHICH IS 980.00 FEET EAST OF THE EASTERLY LINE OF SOUTH COTTAGE GROVE AVENUE (80.00 FEET WIDE) AS MEASURED ALONG A LINE 60.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE SOUTH EAST 1/4 OF SECTION 10 AND ALONG A LINE 60.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE SOUTH 1/2 OF SECTION 11, ALL IN TOWNSHIP AND RANGE AFORESAID, IN COOK COUNTY, ILLINOIS.

PIN:

25-11-300-027-0000

STREET ADDRESS:

1001 East 99th Street, Chicago, Illinois 60628

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EXHIBIT B

OTHER LOAN DOCUMENTS

Loan 1:

1. Security Agreement dated as of July 18, 2000 from Borrower to Lender.
2. UCC-1 Financing Statement from Borrower filed as Document No. 4248836 with the Illinois Secretary of State.

Loan 2:

3. Commercial Security Agreement dated June 14, 2000 from Carlson, Inc. to Lender.
4. UCC-1 Financing Statement from Carlson, Inc. filed as Document No. 4239340 with the Illinois Secretary of State.

Loan 3:

5. Business Loan Agreement dated June 14, 2000 between Carlson, Inc. and Lender.
6. Commercial Security Agreement dated June 14, 2000 from Carlson, Inc. to Lender.
7. UCC Financing Statement from Carlson, Inc. filed as Document No. 4319176 with the Illinois Secretary of State.

All as modified by the Modification.

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EXHIBIT C

LEGAL DESCRIPTION OF ADJACENT PROPERTY

THE NORTH 324.83 FEET OF THE EAST 402.30 FEET OF THE WEST 1808.88 FEET (EXCEPTING THEREFROM THE SOUTH 28.00 FEET OF THE EAST 90.00 FEET OF THE WEST 140.00 THEREOF) OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN:

25-11-300-033

STREET ADDRESS:

1051 East 99th Street, Chicago, Illinois 60628

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