



Doc#: 0729033014 Fee: \$42.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 10/17/2007 07:38 AM Pg: 1 of 10

**PREPARED BY AND WHEN
RECORDED MAIL TO:**

Steven F. Ginsberg, Esq.
Levenfeld Pearlstein, LLC
2 North LaSalle Street
Suite 1300
Chicago, Illinois 60602

**AMENDMENT NO. 2, ASSIGNMENT AND ASSUMPTION OF
LOAN AGREEMENT, REAL ESTATE MORTGAGE,
ASSIGNMENT OF RENTS AND LEASES AND NOTE**

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This AMENDMENT NO. 2, ASSIGNMENT AND ASSUMPTION OF LOAN AGREEMENT, REAL ESTATE MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND NOTE dated as of June 8, 2007 (this "**Amendment**"), by and among CHEBEMMA, INC., an Illinois corporation, as assignor ("**Assignor**"), DIVISION STATE LLC, an Illinois limited liability company, as assignee ("**Assignee**"), NATIONAL CITY BANK, as lender ("**Lender**"), and ATG TRUST COMPANY, as successor to The Northern Trust Company, not personally but as Trustee under Trust No. 10140 dated July 1, 2004 (the "**Trust**"). This Amendment pertains to the real estate in Chicago, Illinois as more particularly described on Exhibit A attached hereto and made a part hereof.

P R E A M B L E

A. Pursuant to the terms and conditions set forth in a construction loan agreement dated July 1, 2004, Lender made a \$8,092,897.53 loan (the "**Loan**") to the Trust and Assignor, in order to reimburse Assignor for certain acquisition and development costs and to finance the development and construction of a retail center on the Land (the "**Project**"), as amended by that certain Amendment No. 1 to Loan Agreement dated as of August 10, 2006 (the "**Loan Agreement**").

B. In connection with the Loan, the Trust and Assignor executed and delivered to Lender that certain Commercial Note dated August 11, 2004 in the principal amount of \$8,092,897.53 as evidence of its indebtedness to Lender, as amended by that certain Amendment No. 1 to Commercial Note dated as of August 10, 2006 (as amended from time to time, the "**Note**"). To secure payment of the Note and the performance of Assignor's obligations under the Loan Agreement, the Trust and Assignor executed and delivered to Lender: (i) that certain Real Estate Mortgage dated July 1, 2004 and recorded August 19, 2004 in the Office of the Cook County Recorder of Deeds (the "**Recorder's Office**") as Document No. 0423239052, as amended by that certain Amendment No. 1 to Real Estate Mortgage dated August 10, 2006 and recorded in the Recorder's Office January 10, 2007 as Document No. 0701033126 (collectively, the "**Mortgage**"), and (ii) that certain Assignment of Rents and Leases dated August 11, 2004 and recorded in the Recorder's Office August 19, 2004 as Document No. 0423239053, as amended by that certain Amendment No. 1 to Assignment of Rents and Leases dated August 10, 2006 and recorded in the Recorder's Office January 10, 2007 as Document No. 0701033127 (collectively, the "**Assignment of Rents**").

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C. Assignor desires to assign to Assignee and Assignee desires to assume from Assignor all of Assignor's right, title and interest as beneficiary of the Trust (the "**Assignment of Trust Interest**").

D. The Trust desires to consent to the Assignment of Trust.

E. Pursuant to Section 8.3 of the Loan Agreement, Assignor must obtain Lender's consent to the Assignment of Trust Interest.

F. Lender wishes to consent to the Assignment of Trust Interest; provided, however, that such consent is conditioned upon the delivery by Assignor, Assignee and the Trust of this Amendment and such other assignments, assumptions, amendments or reinstatements of the Loan Documents (as such term is defined in the Loan Agreement) as Lender may request, including, without limitation, the simultaneous delivery herewith of (i) that certain Payment, Performance and Completion Guaranty and Environmental indemnity executed by Mark Hunt, as guarantor, and (ii) that certain Security Agreement and Collateral Assignment of Beneficial Interest executed by Assignee, as assignor (items (i) and (ii), collectively, the "**Additional Loan Documents**").

AGREEMENT

NOW, THEREFORE, in consideration of the premises which are incorporated herein by this reference and constitute an integral part hereof and the execution and delivery of this Amendment, Assignor, Assignee, Lender and the Trust agree as follows:

1. **Assignment and Assumption.** As of the date hereof, Assignor hereby assigns to Assignee and Assignee hereby assumes from Assignor all of the right, title, interest, duty and obligation of Assignor (a) as Borrower under the Loan Agreement, (b) as Mortgagor under the Mortgage, (c) as Beneficiary under the Assignment of Rents, and (d) as Borrower under the Note.

2. **Consent of Lender.** Subject to the simultaneous delivery herewith of the Additional Loan Documents, Lender hereby consents to the foregoing assignment and assumption; provided, however, that such consent shall not operate to release Assignor from any of its duties, obligations or indemnities under any of the Loan Documents.

3. **Miscellaneous.**

a. All references to the "Mortgage" in the Mortgage shall mean the "Mortgage" as amended by this Amendment and as may be further amended and/or restated from time to time. All references to the "Agreement" in the Loan Agreement shall mean the "Agreement" as amended by this Amendment and as may be further amended and/or restated from time to time. All references to the "Assignment" in the Assignment of Rents shall mean the "Assignment" as amended by this Amendment and as may be further amended and/or restated from time to time. All references to the "Note" in the Note shall mean the "Note" as amended by this Amendment and as may be further amended and/or restated from time to time.

b. In all other respects, the Mortgage, the Loan Agreement, the Assignment of Rents and the Note are each hereby restated, reaffirmed and incorporated herein, the only amendments intended to be made thereto being those above set forth.

c. This Amendment is executed by the Trust, not personally but as trustee as aforesaid, in the exercise of the power and authority conferred and fixed in its as such trustee, and it is expressly understood and agreed that nothing herein contained shall be constituted as creating any

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liability on the Trust as trustee as aforesaid, or on the Trust personally, to pay the indebtedness or any interest that may accrue thereon under the Note, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability on the Trust, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder. Each and all of the representations, warranties, covenants, undertakings and agreements made by the Trust as trustee as aforesaid are made for the purpose of binding (and shall be enforceable against) Assignor or Assignee, as the case may be, as beneficiary of the Trust, and its, his, her and/or their successors and assigns. So far as the Trust as trustee as aforesaid, and its successors, and the Trust, personally, are concerned, Lender and the holder or holders of the Note and the owner or owners of the indebtedness accruing under the Mortgage or the Note shall look solely to the property hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in the Note provided, or by action to enforce the personal liability of any guarantor or co-maker.

[Signatures on following page(s)]

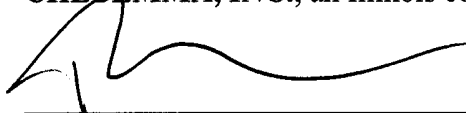
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[Signature page to Amendment No. 2, Assignment and Assumption of Loan Agreement, Real Estate Mortgage, Assignment of Rents and Leases and Note]

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be duly executed and delivered as of the date first above written.

ASSIGNOR:

CHEBEMMA, INC., an Illinois corporation

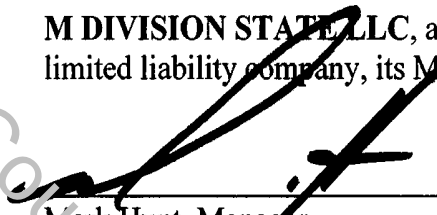


Timothy Cahill, Secretary

ASSIGNEE:

DIVISION STATE LLC, an Illinois limited liability company

By: **M DIVISION STATE LLC**, an Illinois limited liability company, its Manager



Mark Hunt, Manager

TRUST:

ATG TRUST COMPANY, AS SUCCESSOR TO THE NORTHERN TRUST COMPANY, not personally but as Trustee under Trust No. 10140 dated July 1, 2004 and not personally or individually

By: 

Name: **PEGGY PETERS**

Title: **Vice President**

LENDER:

NATIONAL CITY BANK

Tracy S. Larrison, Senior Vice President

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[Signature page to Amendment No. 2, Assignment and Assumption of Loan Agreement, Real Estate Mortgage, Assignment of Rents and Leases and Note]

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be duly executed and delivered as of the date first above written.

ASSIGNOR:

CHEBEMMA, INC., an Illinois corporation

Timothy Cahill, Secretary

ASSIGNEE:

DIVISION STATE LLC, an Illinois limited liability company

By: **M DIVISION STATE LLC**, an Illinois limited liability company, its Manager

Mark Hunt, Manager

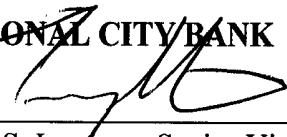
TRUST:

ATG TRUST COMPANY, AS SUCCESSOR TO THE NORTHERN TRUST COMPANY, not personally but as Trustee under Trus. No. 10140 dated July 1, 2004

By: _____
Name: _____
Title: _____

LENDER:

NATIONAL CITY BANK



Tracy S. Larson, Senior Vice President

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STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

Before me, a Notary Public in and for said county and state, personally appeared Timothy Cahill, by me known to be the Secretary of CHEBEMMA, 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 officer of such corporation, and who, being duly sworn, stated that he, being authorized so to do, signed and delivered the foregoing document as such officer of such corporation as his own free and voluntary act and as the free and voluntary act of such corporation, for the uses and purposes therein set forth.

Witness my hand and notary seal this 6th day of Sept., 2007.

Barbara Laurinaite
 Notary Public

My commission expires: 9/12/07



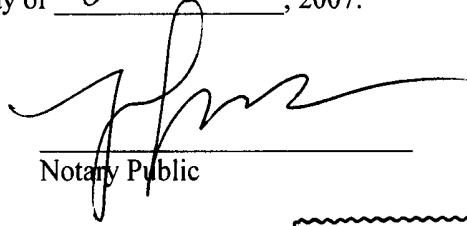
Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

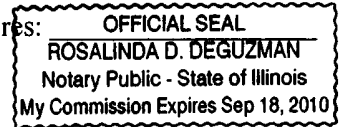
BEFORE ME, a Notary Public in and for said County and State, personally appeared Mark Hunt, by me known to be the Manager of M DIVISION STATE LLC, an Illinois limited liability company, Manager of DIVISION STATE LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer of such company, and who, being duly sworn, stated that he, being authorized so to do, signed and delivered the foregoing document as such officer of such company as his own free and voluntary act and as the free and voluntary act of such company, for the uses and purposes therein set forth.

Witness my hand and notary seal this 9th day of October, 2007.



Notary Public

My commission expires:



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STATE OF ILLINOIS)
 Lake) SS
COUNTY OF ~~COOK~~)

BEFORE ME, a Notary Public in and for said County and State, personally appeared **PEGGY PETERS**, by me known to be the **Vice President** of ATG TRUST COMPANY, as successor to The Northern Trust Company, not personally but as Trustee under Trust No. 10140 dated July 1, 2004, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer of such company, and who, being duly sworn, stated that he~~(she)~~ being authorized so to do, signed and delivered the foregoing document as such officer of such company as his~~(her)~~ own free and voluntary act and as the free and voluntary act of such company, for the uses and purposes therein set forth.

Witness my hand and notary seal this 26th day of September, 2007.



Maura Mannix

Notary Public

My commission expires: 5-1-08

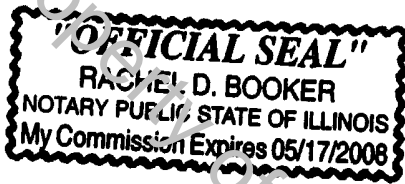
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE ME, a Notary Public in and for said County and State, personally appeared Tracy S. Larrison, by me known to be the Senior Vice President of NATIONAL CITY BANK, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer of such company, and who, being duly sworn, stated that he, being authorized so to do, signed and delivered the foregoing document as such officer of such company as his own free and voluntary act and as the free and voluntary act of such company, for the uses and purposes therein set forth.

Witness my hand and notary seal this 4th day of September, 2007.

Rachel D. Booker
Notary Public



My commission expires: 5-17-08

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EXHIBIT A

LEGAL DESCRIPTION

LOT 3 IN THE ASSESSOR'S SUBDIVISION OF LOT 6 IN GOTTFRIED KNAUSS' SUBDIVISION OF THE NORTH ½ OF BLOCK 1 AND THE WEST 100 FEET OF THE SOUTH HALF OF SAID BLOCK 1 IN THE SUBDIVISION BY THE COMMISSIONERS OF THE ILLINOIS AND MICHIGAN CANAL OF THE SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PINS: 17-03-200-074
17-03-200-075
17-03-200-076

COMMONLY KNOWN AS 1163-1167 N. STATE STREET, CHICAGO, ILLINOIS.