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Doc#: 0903333098 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/02/2009 01:14 PM Pg: 1 of 11

THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

DEUTSCH, LEVY & ENGEL,  
CHARTERED  
225 W. WASHINGTON ST., #1700  
CHICAGO, ILLINOIS 60606  
ATTN: KENNETH W. FUNK

8359419 Gene D 1 of 1

## MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Modification") is made as of the 17 day of November, 2008, by and among VLAND CHICAGO 95<sup>TH</sup> LLC, an Illinois limited liability company ("Borrower"), Steven J. Panko ("Guarantor"), and WORKERS RETAIL TRUST, L.P., a Delaware limited partnership ("Lender").

## RECITALS:

A. Pursuant to that certain Loan Agreement, dated as of November 16, 2006, by and between Borrower and Lender (the "Loan Agreement"), Lender made a loan to Borrower in the principal amount of Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) (the "Loan"), as evidenced by that certain Promissory Note, dated as of November 16, 2006, in the principal amount of the Loan made payable by Borrower to the order of Lender (the "Note"). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement.

B. The Note is secured by, among other things, (i) that certain Mortgage and Security Agreement, dated as of November 16, 2006, from Borrower to Lender recorded with the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office") on November 17, 2006, as Document No. 0633133078 (the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit "A" hereto ("Property"), (ii) that certain Assignment of Rents and Leases, dated as of November 16, 2006, from Borrower to Lender and recorded in the Recorder's Office on November 27, 2006 as Document No. 0633133079 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement, dated as of November 16, 2006, from Borrower and Guarantor to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Loan Agreement, the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, and all other documents evidencing, securing and guarantying the Loan, in their original

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form and as amended hereby, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by that certain Guaranty of Payment and Completion, dated as of November 16, 2008, from Guarantor in favor of Lender (the "Guaranty") and that certain Collateral Assignment of Membership Interests, dated as of November 16, 2006, executed by the members of the Borrower pursuant to which such members, have collaterally assigned all of their membership interests in Borrower to Lender (the "Collateral Assignment").

D. Pursuant to the terms of the Note, the Borrower has previously exercised its option to extend the Maturity Date as stated therein for one (1), six (6) month period, and pursuant to that certain Extension Agreement, dated on or about May 16, 2008, the Maturity Date was extended to November 16, 2008.

E. Borrower and Lender desire to amend the Loan Documents in order to (i) further extend the Maturity Date, and (ii) for the other purposes hereafter set forth.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts and recitals set forth hereinabove (which are hereby incorporated into and made a part of this Modification as representations and warranties of the Borrower), (ii) the agreement by Lender to modify the 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. **Maturity Date and Extension.**

(a) Subject to the satisfaction of Lender's Conditions set forth in Sections 3 and 4, the Maturity Date of the Note is extended to May 16, 2009. Any reference in the Loan Agreement, the Note or any other Loan Document to the Maturity Date shall mean May 16, 2009.

(b) Interest on the unpaid principal balance of the Note shall continue to be payable monthly on the first day of each month, with a final payment of the entire unpaid principal balance, plus all accrued and unpaid interest, together with any and all other payments due to Lender under the Loan Documents and this Modification, including, without limitation, the Modification Fee and any Extension Fee (each as hereinafter defined), due and payable on May 16, 2009.

(c) The Maturity Date may be further extended by Borrower for two (2) additional three (3) month periods (each, an "Extension Period") upon the written request of Borrower received by the Lender not less than thirty (30) days nor more than ninety (90) days

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prior to Maturity Date (or expiration of an Extension Period, as applicable), each such extension being subject to satisfaction of the following:

(i) The payment by Borrower to Lender at the Maturity Date (as extended hereby) of (i) an extension fee equal One Thousand Eight Hundred Seventy-Five and 00/100 Dollars (\$1,875.00) (the "Extension Fee"), and the delivery by Borrower to Lender an extension agreement timely prepared and delivered by Lender and such other documentation as Lender may reasonably require in connection therewith, all of which shall be in form and substance reasonably acceptable to Lender;

(ii) Borrower shall pay all costs incurred by Lender in connection with the Extension Period, including appraisal fees, inspection fees, survey and survey recertification fees, reasonable legal fees, fees for environmental studies and reports and such other professional services which Lender in good faith determines at the time such extension is requested are necessary; the payment by Borrower of these costs and expenses shall not be credited, in any way or to any extent, against any portion of the outstanding balance of the Note;

(iii) At the time of such notice and extension, there shall exist no Event of Default or unmatured Event of Default hereunder, under any of the other Loan Documents or under the Senior Loan;

(iv) If required by Lender, Borrower shall deliver to Lender an opinion of counsel, in form and substance acceptable to Lender, stating that inter alia, any documents executed in connection with such extension create valid and binding obligations of the Borrower and the Guarantor, and the transactions evidenced thereby violate no provisions of applicable law;

(v) Lender determines, in its sole but reasonable determination, that there has been no material adverse change in the financial condition the Borrower from the date of this Amendment; and

(vi) Delivery by Borrower to Lender of all such other items as Lender may reasonably require.

2. Representations and Warranties of Borrower. Borrower hereby represents, covenants and warrants to Lenders as follows:

(a) The representations and warranties in the Loan Agreement, the 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 Mortgage) under the Loan Agreement, the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of

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time, or both, would constitute an Event of Default under the Note, the Mortgage, the other Loan Documents or the Expansion Loan.

(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 Borrower 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 Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization 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 Borrower. This Modification has been duly executed and delivered on behalf of Borrower.

3. Reaffirmation of Guaranty. Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Modification. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of the Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

4. Conditions Precedent. The agreement of Lenders to amend the Loan Documents as set forth herein is subject to the following conditions precedent:

(a) Lender shall have received this Modification duly executed by an authorized person for each entity, and each individual, that is a party hereto.

(b) Lender shall have received an Amendment to the Note, executed by Borrower, in form and content acceptable to Lender.

(c) Lender shall have received resolutions of Borrower approving the execution of this Modification in form and content acceptable to Lender.

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(d) Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Modification, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

(e) Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 1401 008359419 (the "Title Policy"), as of the date this Modification is recorded, reflecting the recording of this Modification, insuring the first priority of the lien of the 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 Lender.

(f) Borrower shall pay to Lender a non-refundable modification fee the ("Modification Fee") in the amount of Three Thousand Seven Hundred Fifty and 00/100 Dollars (\$3,750.00), which shall be due and payable upon the Maturity Date (as modified or otherwise extended hereby).

(g) Guarantor shall have signed and delivered to Lender a Reaffirmation of Guaranty, in form and substance acceptable to Lender.

(h) The members of Borrower shall consent to this Modification and reaffirm their respective obligations under the Collateral Assignment.

(i) The execution and delivery to Lender of such other documents and agreements as Lender may reasonably request.

## 5. 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 Lender than against Borrower or the Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Modification, and Borrower, Guarantor and Lender 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.



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

(d) Borrower, Guarantor and Lender each acknowledge 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 Borrower, Guarantor and Lender; 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 "Loan Agreement", the "Note," the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Loan Agreement, the Note, the 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 Borrower's obligations under this Modification.

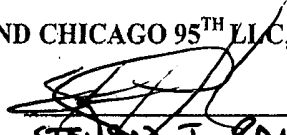
(Signatures on Next Page)

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IN WITNESS WHEREOF, the parties hereto has executed this Modification as of the day and year first above written.

**BORROWER**

VLAND CHICAGO 95<sup>TH</sup> LLC, an Illinois limited liability company

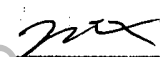
By:   
Name: STEVEN J. PANKO  
Its: \_\_\_\_\_

**LENDER:**


WORKERS RETAIL TRUST, L.P., a Delaware limited partnership

By: Commonwealth Realty Investors Company, LLC, a Delaware limited liability company, its General Partner


By: Commonwealth Realty Advisors, Inc., an Illinois corporation, its Manager

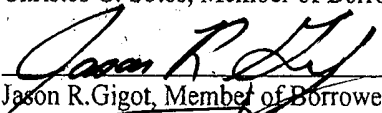
By:   
Name: Mark R. Kilianich  
Its: President

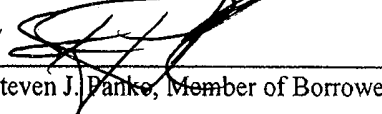
**GUARANTOR:**

  
\_\_\_\_\_  
Steven J. Panko

The undersigned execute this Agreement solely for the purpose of reaffirming each of their respective pledges made pursuant to that certain Collateral Assignment of Membership Interests and Security Agreements (Interests in Borrower) dated November 16, 2006, pursuant to which they each pledge to Lender their respective membership interest in Borrower as security for the Loan.

  
\_\_\_\_\_  
Christos G. Sotos, Member of Borrower

  
\_\_\_\_\_  
Jason R. Gigot, Member of Borrower

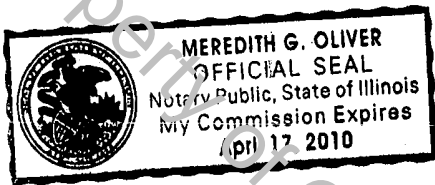
  
\_\_\_\_\_  
Steven J. Panko, Member of Borrower

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STATE OF ILLINOIS )  
 )SS.  
COUNTY OF COOK )

On this 21<sup>ST</sup> day of November, 2008, before me, a Notary Public in and for said State, personally appeared Mark R. Kirincich, to me personally known, who, being by me duly sworn, did say that he is the Pres. & CEO of Commonwealth Realty Advisors, Inc., an Illinois corporation, Manager of Commonwealth Realty Investors Company, a Delaware limited liability company, the General Partner of Workers Retail Trust, L.P., a Delaware limited partnership, and that said instrument was signed by such limited partnership by authority of its members, and said person acknowledged said instrument to be the free act and deed of said limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written, in the county and State aforesaid.



*Meredith G. Oliver*  
Notary Public

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF COOK )

On this 20<sup>th</sup> day of NOVEMBER, 2008, before me, a Notary Public in and for said State, personally appeared STEVE PANKO, to me personally known, who, being by me duly sworn, did say that he is the MANAGER of VLAND Chicago 95<sup>th</sup> LLC, an Illinois limited liability company, and that said instrument was signed by such limited liability company, by authority of its members, and said person acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written, in the county and State aforesaid.



*Debra J. Castro*  
Notary Public



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STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF Cook )

I DEBRA J. CASTRO, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Steven J. Panko 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 20<sup>th</sup> day of November, 2008.

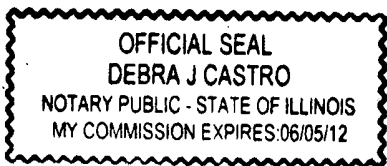


Debra J. Castro  
Notary Public

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF Cook )

I DEBRA J. CASTRO, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Christos G. Sotos 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 20<sup>th</sup> day of November, 2008.



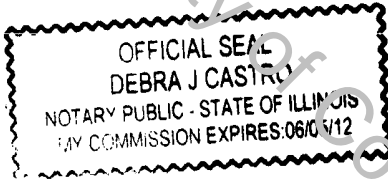
Debra J. Castro  
Notary Public

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STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF COOK )

I DEBRA J. CASTRO, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jason R. Gigot 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 20<sup>th</sup> day of November, 2008.



Debra J. Castro  
Notary Public

Cook County Clerk's Office

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## EXHIBIT A

### Legal Description of Premises

#### PARCEL 1:

LOTS 1 THROUGH 20, BOTH INCLUSIVE, IN BLOCK 4 IN HIGHLAND ADDITION TO LONGWOOD, BEING A RESUBDIVISION OF CALUMET HIGHLAND SUBDIVISION OF THE NORTHWEST  $\frac{1}{4}$  OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART OF LOTS 1 TO 10 TAKEN FOR THE WIDENING OF 95<sup>TH</sup> STREET AND THAT PART OF LOTS 10 TO 20 TAKEN FOR WIDENING OF WESTERN AVENUE), IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

ALL THAT PART OF THE VACATED EAST/WEST 16 FOOT PUBLIC ALLEY, LYING SOUTH OF AND ADJOINING THE SOUTH LINE OF LOTS 6 TO 10, BOTH INCLUSIVE; LYING NORTH OF AND ADJOINING THE NORTH LINE OF LOT 11; LYING EAST OF AND ADJOINING A LINE 10.00 FEET EAST OF AND PARALLEL WITH THE ORIGINAL WEST LINE OF SAID LOT 11 PRODUCED NORTH 16.00 FEET AND LYING WEST OF AND ADJOINING THE EAST LINE OF LOT 11, PRODUCED NORTH 16.00 FEET ALL IN BLOCK 4 IN HIGHLAND ADDITION TO LONGWOOD, BEING A RESUBDIVISION OF CALUMET HIGHLAND SUBDIVISION OF THE NORTHWEST  $\frac{1}{4}$  OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: W 95th St. & Western Ave, Chicago, IL 60620

**THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:**

Kenneth W. Funk, Esq.  
Deutsch, Levy & Engel, Chartered  
225 W. Washington Street  
Ste. 1700  
Chicago, Illinois 60606

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