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AND AFTER RECORDING RETURN TO:

Holland & Knight LLP  
131 S. Dearborn Street  
30<sup>th</sup> Floor  
Chicago, Illinois 60603  
Francis L. Keldermans, Esq.

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Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
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## SECOND MODIFICATION OF LOAN DOCUMENTS

This Second Modification of Loan Documents ("Agreement") is dated as of May 15, 2010 by and among **Glendale 2004 LLC**, an Illinois limited liability company ("Borrower"), **Lance Chody, Fred Hoffman and Rick Heidner** (individually, "Guarantor" and collectively "Guarantors"), and **MB Financial Bank, N.A.**, a national banking association ("Lender").

### RECITALS:

A. Lender has heretofore made a loan to Borrower in the principal amount of Four Million One Hundred Seventy Nine Thousand Five Hundred and No/100 Dollars (\$4,179,500.00) pursuant to the terms and conditions of that certain Business Loan Agreement dated as of March 28, 2008 by and between Borrower and Lender ("Initial Loan Agreement").

B. Borrower made and delivered to Lender its promissory note dated as of March 28, 2008 in the principal amount of Four Million One Hundred Seventy Nine Thousand Five Hundred and No/100 Dollars (\$4,179,500.00) ("Initial Note").

C. The Initial Note is secured by, among other things, (i) Mortgage made by Borrower in favor of Lender, dated as of March 28, 2008 ("Initial Mortgage") and recorded in the Office of the Cook County, Illinois Recorder of Deeds (the "Recorder's Office") on May 6, 2008 as Document No. 0812741069 creating a first mortgage lien on the real property and all improvements thereon legally described on Exhibit A attached hereto ("Property"), (ii) an Assignment of Rents dated as of March 28, 2008 and recorded with the Recorder's Office on May 6, 2008 as Document No. 0812741070 made by Borrower in favor of Lender ("Assignment"), and (iii) a guaranties dated as of October 4, 2007 from Guarantors in favor of Lender ("Guaranty").

D. On or about August 18, 2008 Lender agreed to increase the amount of the Initial Loan from Four Million One Hundred Seventy Nine Thousand Five Hundred and No/100

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Dollars (\$4,179,500.00) to Seven Million Three Hundred Seventy Five Thousand and No/100 Dollars (\$7,375,000.00).

E. Borrower executed and delivered to Lender its promissory note dated as of August 18, 2008 ("7,375,000 Note") in the principal amount of Seven Million Three Hundred Seventy Five Thousand and No/100 Dollars (\$7,375,000.00) ("7,375,000 Loan").

F. The Initial Mortgage was modified pursuant to a Modification of Mortgage dated as of August 18, 2008 by and between Borrower and Lender and recorded with the Recorder's Office on September 8, 2008 as Document No. 0825241005 made by Borrower in favor of Lender ("Modification") (the Initial Mortgage and the Modification are collectively referred to hereinafter as the "Mortgage").

G. On or about May 9, 2009 Borrower, Guarantor and Lender entered into a First Modification of Loan Documents dated as of May 9, 2009 ("First Modification") whereby the parties agreed, among other things, to bifurcate the 7,375,000 Loan into the following credit facilities, both loans which are secured by the Property:

(1) \$5,375,000.00 term loan with monthly principal and interest payments based upon a twenty five (25) year amortization period ("Term Loan"); and

(2) \$2,000,000.00 land loan ("Land Loan") (Term Loan and Land Loan collectively referred to as "Loans").

H. In connection with the First Modification, Borrower executed and delivered to Lender the following promissory notes, each dated as of May 9, 2009 in favor of Lender: (i) a promissory note in the principal amount of the Term Loan, namely, \$5,375,000.00 and due on May 15, 2011 ("Term Note"); and (ii) a promissory note in the principal amount of the Land Loan, namely, \$2,000,000.00 and due on May 15, 2010 ("Land Note").

I. Borrower and Lender desire to enter into this Agreement in order to, among other things: (i) renew the Land Loan ("Extension"); and (ii) require Borrower to fund an interest reserve with Lender ("Interest Reserve"). In connection herewith, Borrower shall execute and deliver to lender a First Amended and Restated Land Note ("First Amended Land Note") dated of even date herewith in the principal amount of \$2,000,000.00. (Land Note and First Amended Land Note collectively referred to herein as "Land Note")

J. The Term Note and Land Note are collectively referred to hereinafter as the "Notes") (the Initial Loan Agreement, the First Modification and this Agreement collectively referred to herein as "Loan Agreement") (the Loan Agreement, Notes, the Mortgage, the Assignment, the Guaranty, this Agreement, and any other document now or hereafter given to evidence or secure payment of the Loans or delivered to induce Lender to disburse any proceeds of the Loans, as such documents may hereafter be amended, restated or replaced from time to time, are hereinafter collectively referred to as the "Loan Documents"). All terms not capitalized herein shall have the meanings ascribed to them in the Loan Agreement.

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## AGREEMENTS:

NOW, THEREFORE, in consideration of: (i) the facts set forth herein above (which are incorporated into and made a part of this Agreement), (ii) the agreements 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 all hereby acknowledged, the parties hereby agree as follows:

1. **Promissory Notes:** Concurrent herewith Borrower shall execute and deliver to Lender the First Amended Land Note made by Borrower in favor of Lender in the principal amount of \$2,000,000.00. Borrower agrees and acknowledges that the outstanding balance of the Land Note is \$1,997,933.23 ("Balance") and as of the date hereof, the Balance shall be the maximum commitment of funds available from Lender to Borrower under the Land Note.
2. **Maturity Date.** The Maturity Dates of the Notes are as follows: The maturity date of the Term Loan shall continue to be May 15, 2011 and maturity date of the Land Loan shall be January 15, 2011. Any reference in the Notes, the Loan Agreement or any other Loan Document to the Maturity Date shall mean May 15, 2011 for the Term Loan and January 15, 2011 for the Land Loan.
3. **Loan Rate.** Effective with the date of this Agreement, the interest rate of both the Term Loan and the Land Loan shall be five and fifty one hundredths percent (5.50%) per annum, fixed ("Loan Rate").
4. **Interest Reserve.** As a condition precedent to Lender entering into this Agreement, Borrower shall provide to Lender the sum of Seventy Five Thousand and 00/100 Dollars (\$75,000.00), from funds other than proceeds of the Land Note, which shall be held back by the Lender (the "**Interest Reserve**"). The Interest Reserve shall only be disbursed by the Lender for the purpose of funding accrued and unpaid interest on the Land Note, shall not accrue interest until actually disbursed to or for the benefit of the Borrower and, when so disbursed, shall be considered an outstanding obligation under the Land Note. Notwithstanding the foregoing, the Lender shall have no obligation to disburse all or any part of the Interest Reserve upon the occurrence and continuation of an Event of Default. Upon the occurrence of an Event of Default, the Lender may use and apply all or any part of the Interest Reserve to cure such Event of Default, as a prepayment of the outstanding principal amount of the Land Note, or for the funding of accrued and unpaid interest on the Land Note.
5. **Cross Default.** In addition to all other defaults and Events of Default set forth in the Loan Agreement, the Notes, the Mortgage, and all of the other Loan Documents, a default under the Term Note shall be deemed a default under Land Note and a default under the Land Note shall be deemed a default under the Term Note.
6. **Collateral for the Notes.** Borrower continues to mortgage, grant, assign, remise, release, warrant and convey to Lender, its successors and assigns, and grant a security interest in the Property to secure repayment of the Notes and all other obligations of Borrower and Guarantors under the Loan Documents.

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7. **Real Estate Taxes.** Borrower will continue to pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever with respect to both the Property and the Additional Collateral (collectively, "Taxes"), whether or not assessed against Borrower, if applicable to the Property, the Additional Collateral, or any interest therein, subject to Borrower's right to contest the same, as provided by the terms hereof; and Borrower will furnish to the Lender duplicate receipts therefore within ten (10) days of the due date of any such Taxes.

8. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

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

(b) There is currently no default under the Loan Agreement, the Notes, 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 time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, 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, Guarantors or any other party whose financial statement has been delivered to Lender in connection with the Loans from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, neither Borrower nor any Guarantor has any claims, counterclaims, defenses, or set-offs with respect to the Loans or the Loan Documents as modified herein.

(e) 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 Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement 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 Agreement has been duly executed and delivered on behalf of Borrower.

9. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 75830276 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage with respect to both Notes, subject only to the exceptions set

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forth in the Title Policy as of its date of issuance and any other encumbrances as may be expressly agreed to by Lender.

**10. Guaranty.** Each Guarantor ratifies and affirms his Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. In addition, Lance Chody hereby unconditionally and irrevocably guaranties to Lender one third of the aggregate indebtedness and other obligations of Borrower to Lender evidenced by the Notes and any other amounts that may become outstanding from time to time under the Loan Documents (such indebtedness, obligations and other amounts are hereinafter referred to as "Payment Obligations"). Fred Hoffman hereby unconditionally and irrevocably guaranties to Lender the Payment Obligations. Rick Heidner hereby unconditionally and irrevocably guaranties to Lender the Payment Obligations. The foregoing guaranties are a present and continuing guaranty of payment and not of collectibility, and Lender shall not be required to prosecute collection, enforcement or other remedies against Borrower or any other Guarantor of the Payment Obligations, or to enforce or resort to any collateral for the repayment of the Payment Obligations or other rights or remedies pertaining thereto, before calling on any Guarantor for payment. If for any reason Borrower shall fail or be unable to pay, punctually and fully, any of the Payment Obligations, each Guarantor shall pay his respective obligations to Lender in full immediately upon demand. One or more successive actions may be brought against Guarantors, as often as Lender deems advisable, until all of the Payment Obligations are paid and performed in full. The representations and warranties of Guarantors in the Guaranty are, as of the date hereof, true and correct and Guarantors do not know of any default thereunder. Guarantors have no claims or defenses to the enforcement of the rights and remedies of Lender hereunder. In addition, each Guarantor hereby expressly and unconditionally waives, releases, and discharges any and all rights or claims under the Illinois Surety Act, 740 ILCS 155/0.01 et. seq. ("Illinois Surety Act"), and further acknowledges and agrees that Lender has no duty or obligation to Guarantors under the Illinois Surety Act.

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

**12. Miscellaneous.**

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

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantors merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantors and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantors 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 Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will,

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without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, 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 Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantors nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantors and Lender 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 Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantors and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement 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 Notes, the Mortgage and the other Loan Documents as defined herein or 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 Agreement 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 and Guarantors' obligations under this Agreement.

[Signature Page Follows]

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement dated as of the day and year first above written.

**LENDER:**

**MB Financial Bank, N.A.**  
a national banking association

By: Robert Matijevich  
Name: Robert Matijevich  
Title: First Vice President

**BORROWER:**

**Glendale 2004 LLC**  
an Illinois limited liability company

By: [Signature]  
Name: Lance Chody  
Title: Manager

**GUARANTORS:**

[Signature]  
Name: Lance Chody

[Signature]  
Name: Fred Hoffman

[Signature]  
Name: Rick Heidner

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STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **Fred Hoffman**, who is personally known to me to be the same person whose name is subscribed to this Agreement, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 9<sup>th</sup> day of June, 2010

*Karen Storck*

Notary Public



STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **Rick Heidner** who is personally known to me to be the same person whose name is subscribed to this Agreement, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 9<sup>th</sup> day of June, 2010.

*Karen Storck*

Notary Public





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## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

#### PARCEL 1:

LOTS 64 TO 79, NORTH INCLUSIVE IN KOESTER AND ZANDERS NORTH CENTRAL AVENUE SUBDIVISION, BEING A SUBDIVISION OF THE SOUTH 1/4 OF THE WEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AND

#### PARCEL 2:

LOT 90 IN KOESTER AND ZANDER'S ADDITION TO WEST IRVING PARK, A SUBDIVISION OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

LOTS 59 TO 63, INCLUSIVE IN KOESTER AND ZANDER'S NORTH CENTRAL AVENUE SUBDIVISION OF THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address: 3648 and 3649 N. Central Avenue, Chicago, Illinois

Real Estate Tax Nos.: 13-21-124-040-0000 and 13-20-227-027-0000

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