

# UNOFFICIAL COPY

This instrument was prepared by  
and after recording return to:

Scott L. David  
Much Shelist  
191 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606-1615  
(312) 521-2404

Street Address: 444 North Northwest Highway,  
Park Ridge, Illinois 60068

PIN: 09-26-302-878-0000



Doc#: 1102629146 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/26/2011 03:25 PM Pg: 1 of 10

ABOVE SPACE FOR RECORDER'S USE ONLY

## LOAN DOCUMENT MODIFICATION AND FORBEARANCE AGREEMENT

**THIS LOAN DOCUMENT MODIFICATION AND FORBEARANCE AGREEMENT** (this "**Modification**") is made as of the 29th day of August, 2010 (the "**Effective Date**"), by and among **444 North Northwest Hwy, LLC**, an Illinois limited liability company ("**Borrower**"), **John M. Heinz, individually ("Heinz") and the John M. Heinz Trust dated January 16, 1992 ("the Heinz Trust";** Heinz and the Heinz Trust are collectively referred to as "**Guarantor**"), and **First Chicago Bank & Trust**, an Illinois banking corporation as successor to Bloomingdale Bank & Trust, its successors or assigns ("**Lender**").

### RECITALS:

A. Lender has made a loan ("**Loan**") to LaSalle Bank, N.A. not personally but as Trustee under a Trust Agreement dated January 30, 1981 and known as Trust No. 24611 ("**Trustee**") in the original principal amount of Six Million Three Hundred Twenty Thousand and zero/100 Dollars (\$6,320,000.00) ("**Loan Amount**") as evidenced by that certain Promissory Note dated May 29, 2003 ("**Note**") in the principal amount of the Loan.

B. The Note is secured by, among other things, (i) that certain Mortgage dated May 29, 2003 from Trustee to Lender recorded with the Recorder of Deeds in Cook County, Illinois ("**Recorder**") on June 3, 2003 as Document No. 0315450327 (the "**Mortgage**"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("**Property**"), and (ii) that certain Assignment of Rents dated May 29, 2003 from Trustee to Lender recorded with the Recorder on June 3, 2003 as Document No. 0315450328 (the "**Assignment**"), which Assignment encumbers the Property.

# UNOFFICIAL COPY

C. The Note is further secured by that certain Continuing Guaranty (Unlimited) dated as of May 29, 2003 executed and delivered by Guarantor in favor of Lender (the "**Guaranty**"). The Note, Mortgage, Assignment, Guaranty and other documents evidencing, securing and guarantying the Loan, in their original form and as amended (including as amended by this Modification), are sometimes collectively referred to herein as the "**Loan Documents**."

D. On or about December 17, 2007, title to the Property was conveyed by Trustee to Borrower. Borrower entered into a loan transaction with New Century Bank whereby New Century Bank recorded a junior mortgage against the Property on December 17, 2007 as Document No. 0735133081 (the "**Junior Mortgage**").

E. On or about August 29, 2009, Borrower executed and delivered to Lender a Change in Terms Agreement which among other things extended the maturity date of the Loan to August 29, 2010 and indicated that the principal amount of the Loan outstanding was Five Million Two Hundred Ten Thousand and zero/100 Dollars (\$5,210,000.00).

F. On or about December 2, 2009, New Century Bank filed a proceeding in the Circuit Court of Cook County against Borrower to foreclose the Junior Mortgage in Case No. 09 CH 47941. ( the "**Foreclosure Action** ") As part of the Foreclosure Action, New Century had a receiver appointed for the Property on January 12, 2010. Lender has intervened in and filed a Complaint to Foreclose, but has not served the lawsuit on the parties at this time.

G. The Maturity Date of the Loan was August 29, 2010 and Borrower failed to repay the Loan as required under the Loan Documents. As of the Effective Date, the outstanding balance of the Loan is \$5,121,711.15. Borrower is in default of its obligation to pay the foregoing amount and is otherwise in default as a result of the appointment of the receiver and the Foreclosure Action under the Junior Mortgage, and as otherwise in breach of its obligations under the Note and the other Loan Documents (collectively, the "**Default**").

H. Lender, subject to the terms and conditions set forth herein, is willing to forbear from exercising all of the rights and remedies available, or to become available, to Lender (the "**Forbearance**") whether under the Loan Documents, at law or in equity (such rights and remedies are hereinafter collectively referred to as the "Remedies"); provided, that such Forbearance by Lender shall terminate on the Forbearance Termination Date (as hereinafter defined).

## AGREEMENTS:

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

# UNOFFICIAL COPY

1. **Recitals.** The Recitals set forth above are incorporated into and made part of this Modification. Capitalized terms used and not otherwise defined in this Modification shall have the meanings ascribed to such terms in the Loan Documents.

2. **Forbearance.**

(a) For so long as no Forbearance Default (as defined below) has occurred and is continuing, and except as expressly provided herein, Lender hereby agrees to refrain during the Forbearance Period from demanding payment of the Loan and exercising any or all of its rights and Remedies under the Loan Documents. Borrower acknowledges that Lender is agreeing to the forbearance described herein in substantial part based on the agreements and acknowledgements set forth in Sections 2(c) through 2(d), Sections 5, 6 and 7 hereof, and Borrower is making such agreements and acknowledgements in consideration of such forbearance by Lender.

(b) As used in this Modification, "Forbearance Default" shall mean the occurrence of any of the following events:

(i) Borrower shall fail, on or before the due date thereof, to make any monthly payment due under the Loan Documents or any other amount due and payable under the Loan Documents; or

(ii) Borrower defaults under any of its other obligations under the Loan Documents and fails to cure same within any applicable cure period.

Borrower hereby agrees and acknowledges that the occurrence of any Forbearance Default would be material to Lender, and Lender is agreeing to the forbearance contemplated hereby only in the absence of any Forbearance Default. From and after the Forbearance Termination Date, and without further notice to Borrower, Lender shall be immediately entitled to fully enforce the Loan Documents, including, without limitation, immediately exercising any or all its rights and Remedies.

(c) Except as otherwise expressly set forth in this Modification, nothing in this Modification shall be construed to be a waiver of or acquiescence in the Default or any other default or event of default under any of the Loan Documents. Lender hereby expressly reserves all of its rights and Remedies under the Loan Documents and under applicable law, except as expressly limited herein.

(d) Except as expressly set forth herein, this Modification shall not constitute: (i) a waiver, release, amendment, or modification of, or agreement to forbear from exercising any rights, remedies, or causes of action which Lender may possess as of the date hereof or which arise or accrue after the date hereof, which arise out of, under or with respect to any of the Loan Documents; (ii) an agreement to negotiate with one or more of the parties; (iii) an agreement to amend or modify any or all of the Loan Documents; or (iv) a course of conduct or course of dealing relating to any one or more of the above.

# UNOFFICIAL COPY

(e) For purposes of this Modification, the following terms shall have the meanings hereinafter ascribed to them:

- A. Forbearance Default. Shall have the meaning given in Section 2(b) hereof.
- B. Forbearance Period. The period of time beginning on the Effective Date Modification and ending on the Forbearance Termination Date.
- C. Forbearance Termination Date. The earlier to occur of (i) May 5, 2011, or (ii) the date of the occurrence of a Forbearance Default.

3. Maturity Date and Payments. Effective as of the Effective Date, the Loan Documents are hereby modified by changing the Maturity Date from August 29, 2010 to May 5, 2011. Furthermore, during the Forbearance Period, Borrower shall continue to make monthly payments of interest only on the outstanding principal balance at a rate of six percent (6%) per annum on or before the 29<sup>th</sup> day of each month commencing September 29, 2010.

4. Amendments to Loan Documents. Each of the Loan Documents is hereby amended and modified so that any reference therein to the "Note" shall be deemed to be a reference to the Note as defined in this Modification. In addition, any reference in any of the Loan Documents to the "Loan" or the "Loan Amount" shall be deemed to be a reference to the "Loan" and "Loan Amount" as defined in this Modification.

5. Representations and Warranties. Borrower and each Guarantor (as applicable) hereby represents, covenants and warrants to Lender as follows:

(a) 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 and Guarantor, enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(b) Neither Borrower nor any Guarantor has any defense, counterclaim, offset, claim or demand which could be asserted to reduce or eliminate all or any part of the Borrower's or Guarantor's obligations under the Loan Documents, or which could be asserted to mitigate or excuse any defaults by Borrower or Guarantor in the payment or the performance of Borrower's or Guarantor's obligations under the Loan Documents.

(c) 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.

6. Reaffirmation of Loan Documents. Borrower ratifies and affirms the Loan Documents to which it is a party, as amended hereby, and agrees that the Loan Documents are in

# UNOFFICIAL COPY

full force and effect following the execution and delivery of this Agreement. The Loan Documents continue to be the valid and binding obligation of the Borrower, enforceable in accordance with their respective terms and Borrower has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder.

7. **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 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.

8. **Loan Fees and Costs.** As a condition precedent to the agreements contained herein, Borrower shall pay Lender 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.

9. **Title Policy.** If requested by Lender, as a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company (the "**Title Company**") to issue an endorsement to Lender's title insurance policy No. 008112466 (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, 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.

10. **Miscellaneous.**

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

(b) This Modification may not be construed more strictly against Lender than against Borrower or 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 parties 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 Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated

# UNOFFICIAL COPY

with Borrower or Guarantor, nor will privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor 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 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 modified as set forth in this Modification. Except as expressly modified pursuant to this Modification, the terms of the Loan Documents are and remain unmodified and in full force and effect. Borrower acknowledges that Lender has made no further agreements to further amend or modify the Loan Documents, or to extend the maturity date of the Loan or to further forbear from exercising any of its rights or remedies under the Loan Documents.

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

(f) Any reference to the "Note," the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents should be considered to refer to the Note, the Mortgage and the other Loan Documents as amended from time to time. The paragraph and section headings used in this Modification are for convenience only and shall not limit the substantive provisions hereof. All words in this Modification that are expressed in the neuter gender should be considered to include the masculine, feminine and neuter genders. Any word in this Modification that is expressed in the singular or plural should be considered, whenever appropriate in the context, to include the plural and the singular.

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

(e) Time is of the essence of each of Borrower's obligations under this Modification.

[REMAINDER OF PAGE INTENTIONALLY BLANK-SIGNATURE PAGE FOLLOWS]

# UNOFFICIAL COPY

This Modification was executed as of the date and year set forth above.

**LENDER:**

**FIRST CHICAGO BANK & TRUST, an  
Illinois banking corporation**

By: *Renee M. Kirin*  
Name: *RENEE M. Kirin*  
Title: *S. Vice President*

**BORROWER:**

**444 NORTH NORTHWEST HWY, LLC, an  
Illinois limited liability company**

By: *John M. Heinz*  
Its: *President*

**GUARANTOR:**

*John M. Heinz*  
John M. Heinz

**JOHN M. HEINZ TRUST DATED  
JANUARY 16, 1992**

By: *John M. Heinz*  
John M. Heinz  
Its: Trustee

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

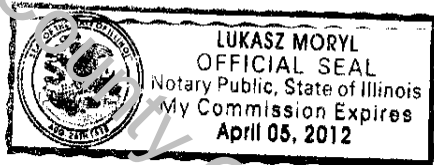
STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

I Lukasz Moryl, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Renee Kinn, Vice President of First Chicago Bank & Trust, 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 29 day of December, 2010.

Lukasz Moryl  
Notary Public

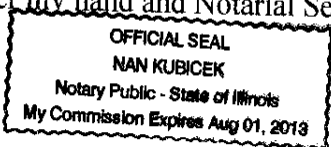
My Commission Expires: \_\_\_\_\_



STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

I Nan Kubicek, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOHN M. HEINZ, the president of 444 North Northwest Hwy, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed his name 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 29 day of December, 2010.



Nan Kubicek  
Notary Public

My Commission Expires: 8/1/13

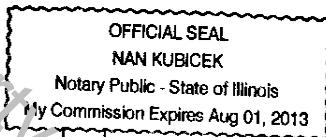


# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

I Nan Kubicek, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOHN M. HEINZ 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 29th day of December, 2010.



*Nan Kubicek*

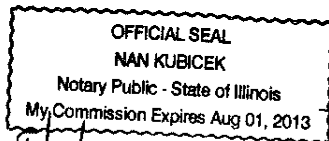
Notary Public

My Commission Expires: 8/1/13

STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

I Nan Kubicek, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOHN M. HEINZ, as Trustee for the John M. Heinz Trust dated January 16, 1992, personally known to me to be the same person whose name is subscribed his name 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 29th day of December, 2010.



*Nan Kubicek*

Notary Public

My Commission Expires: 8/1/13

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

LOT 1 IN HEINZ'S COLONIAL PLAZA RESUBDIVISION, BEING A RESUBDIVISION IN THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 26, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF FILED MAY 27, 1981 AS LR3216816, IN COOK COUNTY, ILLINOIS.

PIN: 09-26-302-078-0000

Property of Cook County Clerk's Office