

UNOFFICIAL COPY



THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Wendy M. Reutebuch
Much Shelist
191 N. Wacker Drive, Suite 1800
Chicago, IL 60606
(312)521-2673

Doc#: 1106822086 Fee: \$60.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/09/2011 03:21 PM Pg: 1 of 13

Permanent Tax Index Numbers:

See attached Exhibits A and B

Property Addresses:

See attached Exhibits A and B

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SECOND MODIFICATION OF MORTGAGES AND LOAN DOCUMENTS

THIS SECOND MODIFICATION OF MORTGAGES AND LOAN DOCUMENTS (this "Agreement") is made effective as of the 10th day of January, 2011, by and among 5400 NORTH DAMEN LLC, an Illinois limited liability company ("5400 Damen"), HURTZ, L.L.C., a Delaware limited liability company ("Hurtz"), JAMES KOLBE ("James Kolbe"), PHILIP McCaleb ("Philip McCaleb"), KATHERINE C. KOLBE ("Katherine Kolbe"), JENNIFER McCaleb ("Jennifer McCaleb") and NORTH SHORE COMMUNITY BANK & TRUST COMPANY, its successors and assigns ("Bank").

RECITALS:

A. Bank previously made a loan to 5400 Damen (the "5400 Damen Loan") in the original principal amount of Four Hundred Forty Thousand and 00/100 Dollars (\$440,000.00). The 5400 Damen Loan is evidenced by, among other things, that certain Promissory Note in the amount of Four Hundred Forty Thousand and 00/100 Dollars (\$440,000.00) dated as of January 10, 2006, made by 5400 Damen in favor of Bank (as amended, restated, consolidated or replaced from time to time, the "5400 Damen Note").

B. The 5400 Damen Note is secured by, among other things, (i) that certain Mortgage dated as of January 10, 2006, from 5400 Damen to the Bank, recorded with the Cook County, Illinois Recorder (the "Cook County Recorder") on February 22, 2006 as Document No. 0605343088 (the "5400 Damen Mortgage"), which 5400 Damen Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto (the "5400 Damen Property"), (ii) that certain Assignment of Rents dated as of January 10, 2006, from 5400 Damen to the Bank, recorded with the Cook County Recorder on February 22, 2006 as Document No. 0605343089 (the "5400 Damen Assignment of Rents"), which 5400 Damen Assignment of Rents encumbers the 5400 Damen Property.

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C. The 5400 Damen Loan is further secured by a Commercial Guaranty dated as of January 10, 2006 from each of (i) James Kolbe, (ii) Philip McCaleb, (iii) Katherine Kolbe and (iv) Jennifer McCaleb, in favor of the Bank (each, a "5400 Damen Guaranty" and collectively, the "5400 Damen Guaranty"). James Kolbe, Philip McCaleb, Katherine Kolbe and Jennifer McCaleb are sometimes referred to herein collectively as, the "5400 Damen Guarantors".

D. The 5400 Damen Note, the 5400 Damen Mortgage, the 5400 Damen Assignment of Rents and the 5400 Guaranty are referred to herein collectively as, the "5400 Damen Loan Documents".

E. Bank previously made a loan to Hurtz (the "Hurtz Loan") in the original principal amount of Two Hundred Ninety Thousand Nine Hundred Twenty and 21/100 Dollars (\$290,920.21). The Hurtz Loan is evidenced by, among other things, that certain Promissory Note in the amount of Two Hundred Ninety Thousand Nine Hundred Twenty and 21/100 Dollars (\$290,920.21) dated as of June 28, 2006, made by Hurtz in favor of Bank (as amended, restated, consolidated or replaced from time to time, the "Hurtz Note").

F. The Hurtz Note is secured by, among other things, (i) that certain Mortgage dated as of June 28, 2006, from Hurtz to the Bank, recorded with the Cook County Recorder on January 12, 2007 as Document No. 0701235108 (the "Hurtz Mortgage"), which Hurtz Mortgage encumbers the real property and all improvements thereon legally described on Exhibit B hereto (the "Hurtz Property"), (ii) that certain Assignment of Rents dated as of June 28, 2006, from Hurtz to the Bank, recorded with the Cook County Recorder on January 12, 2007 as Document No. 0701235109 (the "Hurtz Assignment of Rents"), which Hurtz Assignment of Rents encumbers the Hurtz Property.

G. The Hurtz Loan is further secured by a Commercial Guaranty dated as of June 28, 2006 from each of (i) James Kolbe and (ii) Philip McCaleb, in favor of the Bank (each, a "Hurtz Guaranty" and collectively, the "Hurtz Guaranty"). James Kolbe and Philip McCaleb are sometimes referred to herein collectively as, the "Hurtz Guarantors".

H. The Hurtz Note, the Hurtz Mortgage, the Hurtz Assignment of Rents and the Hurtz Guaranty are referred to herein collectively as, the "Hurtz Loan Documents".

I. Bank has also previously extended certain credit facilities to Genuine Scooters, LLC, an Illinois limited liability company, and Scooter Works USA, Inc., an Illinois corporation (collectively, the "Scooter Borrowers"). The Scooter Borrowers and Bank are parties to that certain Amended and Restated Loan and Security Agreement dated as of October 29, 2008, as amended by that certain First Amendment to Amended and Restated Loan and Security Agreement dated as of September 30, 2009, that certain Second Amendment to Amended and Restated Loan and Security Agreement dated as of January 1, 2010, and that certain Third Amendment to Amended and Restated Loan and Security Agreement dated as of May 7, 2010, (as may be amended from time to time, the "Scooter Loan Agreement"), pursuant to which a secured revolving line of credit authorizing the Scooter Borrowers to draw up to \$5,000,000 (currently limited to \$2,900,000) in principal (the "Scooter Revolving Loan") was established.

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The Scooter Revolving Loan and advances made thereunder are collectively referred to herein as the "Scooter Loans".

J. The Scooter Loans are evidenced, governed and secured by, among other things, the following documents (collectively, together with all other agreements, instruments and other documents defined in the Scooter Loan Agreement as such, the "Scooter Financing Agreements"):

1. Second Amended and Restated Revolving Note ("Scooter Revolving Note") dated May 7, 2010, in the principal amount of \$5,000,000, executed by the Scooter Borrowers in favor of Bank;

2. Amended and Restated Commercial Guaranty dated as of October, 2008 made by Philip McCaleb (the "McCaleb Guaranty") in favor of Bank;

3. Amended and Restated Commercial Guaranty dated as of October, 2008 made by James Kolbe (the "Kolbe Guaranty," and together with the McCaleb Guaranty, the "Scooter Guarantees") in favor of Bank;

K. The Scooter Loan Agreement, the Scooter Revolving Note and the Scooter Guarantees are referred to herein collectively as, the "Scooter Loan Documents".

L. The principals of 5400 Damen and Hurtz are principals of the Scooter Borrowers and as such, have a financial interest in the Scooter Borrowers. The Scooter Borrowers executed a Forbearance Agreement date as of November 22, 2010 with the Bank (the "Scooter Forbearance"). In consideration for the Scooter Forbearance, the Scooter Borrowers, Phillip McCaleb and James Kolbe agreed to cross-collateralize and cross-default the Scooter Loans, the 5400 Damen Loan and the Hurtz Loan pursuant to that certain First Modification of Mortgage and Loan Documents dated as of November 30, 2010 and recorded December 16, 2010 as Document No. 1035018066.

M. 5400 Damen and Lender have agreed to modify the 5400 Damen Note as of the Effective Date in order to extend the maturity date under the 5400 Damen Note from January 10, 2011 to April 30, 2011 pursuant to the terms of this Agreement.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are incorporated into and made a part of this Agreement), (ii) the agreements by Bank, 5400 Damen, Hurtz, 5400 Damen Guarantors and Hurtz Guarantors to modify the 5400 Damen Loan Documents and the Hurtz Loan Documents, as provided in this Agreement, and the agreements of the Bank contained in the Scooter Forbearance (as defined below), (iii) the covenants and agreements contained in this Agreement, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties agree as follows:

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1. **Recitals.** The Recitals set forth above are incorporated into and made part of this Agreement.
2. **Modification of 5400 Damen Loan Documents.** The 5400 Damen Note and the 5400 Damen Loan Documents are hereby amended to extend the maturity date of the 5400 Damen Note from January 10, 2011 to April 30, 2011.
3. **Reaffirmation of 5400 Damen Guaranty.** The 5400 Damen Guarantors hereby ratify and affirm the 5400 Damen Guaranty and agree that the 5400 Damen Guaranty is in full force and effect, as amended hereby, following the execution and delivery of this Agreement. The representations and warranties of the 5400 Damen Guarantors in the 5400 Damen Guaranty are, as of this date, true and correct and the 5400 Damen Guarantors do not know of any default thereunder. The 5400 Damen Guaranty, as amended hereby, continues to be the valid and binding obligations of the 5400 Damen Guarantors, enforceable in accordance with its terms and the 5400 Damen Guarantors have no claims or defenses to the enforcement of the rights and remedies of the Bank thereunder, except as provided in the 5400 Damen Guaranty.
4. **Reaffirmation of Hertz Guaranty.** The Hertz Guarantors hereby ratify and affirm the Hertz Guaranty and agree that the Hertz Guaranty is in full force and effect, as amended hereby, following the execution and delivery of this Agreement. The representations and warranties of the Hertz Guarantors in the Hertz Guaranty are, as of this date, true and correct and the Hertz Guarantors do not know of any default thereunder. The Hertz Guaranty, as amended hereby, continues to be the valid and binding obligations of the Hertz Guarantors, enforceable in accordance with its terms and Hertz Guarantors have no claims or defenses to the enforcement of the rights and remedies of the Bank thereunder, except as provided in the Hertz Guaranty.
5. **Expenses.** As a condition precedent to the agreements contained herein, 5400 Damen and Hertz shall pay all reasonable out-of-pocket third-party costs and expenses incurred by the Bank in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and reasonable attorneys' fees and expenses.
6. **Authority.** 5400 Damen and Hurts hereby represent and warrant to the Bank that: (a) 5400 Damen and Hertz have duly authorized, executed and delivered this Agreement, the 5400 Damen Loan Documents and the Hertz Loan Documents, as applicable, (b) this Agreement, the 5400 Damen Loan Documents and the Hertz Loan Documents constitute the legal, valid and binding obligations of 5400 Damen and Hertz and are enforceable in accordance with their terms, and (c) the organizational documents of 5400 Damen and Hertz previously provided to the Bank have not been materially modified, replaced or amended.
7. **Miscellaneous.**
 - (a) This Agreement is governed by and should be construed in accordance with the laws of the State of Illinois.
 - (b) This Agreement may not be construed more strictly against the Bank than against 5400 Damen, Hertz or any of the 5400 Damen Guarantors or the Hertz Guarantors merely by virtue of the fact that the same has been prepared by counsel for

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the Bank, it being recognized that 5400 Damen, Hertz, the 5400 Damen Guarantors, the Hertz Guarantors and the Bank have contributed substantially and materially to the preparation of this Agreement, and 5400 Damen, Hertz, the 5400 Damen Guarantors, the Hertz Guarantors and the Bank 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, without promises or threats or the exertion of duress upon it. The parties state that they have read and understand this Agreement, that they intend to be legally bound by it.

(c) Notwithstanding the execution of this Agreement by the Bank, the same shall not be deemed to constitute the Bank a venturer or partner of or in any way associated with 5400 Damen, Hertz or any of the 5400 Damen Guarantors or the Hertz Guarantors, nor will privity of contract be presumed to have been established with any third party.

(d) 5400 Damen, Hertz, the 5400 Damen Guarantors, the Hertz Guarantors and the Bank each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the 5400 Damen Loan Documents, the Hertz Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of 5400 Damen, Hertz, the 5400 Damen Guarantors, the Hertz Guarantors and the Bank; and that all such prior understandings, agreements and representations are modified as set forth in this Agreement. Except as expressly modified herein, the terms of the 5400 Damen Loan Documents and the Hertz Loan Documents are and remain unmodified and in full force and effect.

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

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

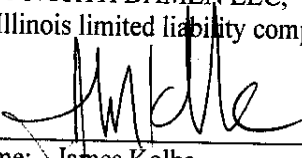
[Remainder of page intentionally blank-signature page follows]

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

5400 DAMEN:

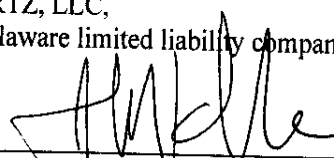
5400 NORTH DAMEN LLC,
an Illinois limited liability company

By: 
Name: James Kolbe
Its: Manager

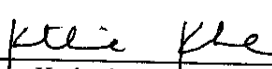
By: _____
Name: Philip McCaleb
Its: Manager

HURTZ:

HURTZ, LLC,
a Delaware limited liability company

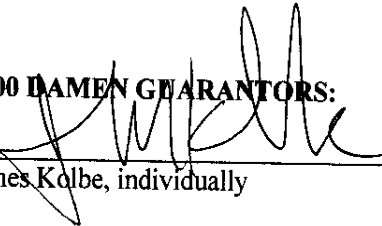
By: 
Name: James Kolbe
Its: Member

By: _____
Name: Philip McCaleb
Its: Member

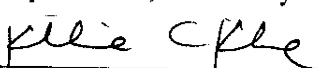
By: 
Name: Katherine Kolbe
Its: Member

By: _____
Name: Jennifer McCaleb
Its: Member

5400 DAMEN GUARANTORS:

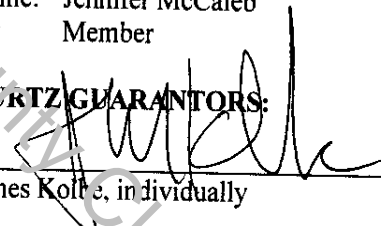

James Kolbe, individually

Philip McCaleb, individually


Katherine C. Kolbe, individually

Jennifer McCaleb, individually

HURTZ GUARANTORS:


James Kolbe, individually

Philip McCaleb, individually

BANK:

NORTH SHORE COMMUNITY BANK &
TRUST

By: _____
Name: _____
Title: _____

[Notary pages attached, following]

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

5400 DAMEN:

5400 NORTH DAMEN LLC,
an Illinois limited liability company

By: _____
Name: James Kolbe
Its: Manager

By: _____
Name: Philip McCaleb
Its: Manager

HURTZ:

HURTZ, LLC,
a Delaware limited liability company

By: _____
Name: James Kolbe
Its: Member

By: _____
Name: Philip McCaleb
Its: Member

By: _____
Name: Katherine Kolbe
Its: Member

By: _____
Name: Jennifer McCaleb
Its: Member

5400 DAMEN GUARANTORS:

James Kolbe, individually

Philip McCaleb, individually

Katherine C. Kolbe, individually

Jennifer McCaleb, individually

HURTZ GUARANTORS:

James Kolbe, individually

Philip McCaleb, individually

BANK:

NORTH SHORE COMMUNITY BANK &
TRUST

By: _____
Name: _____
Title: _____

[Notary pages attached, following]

UNOFFICIAL COPY

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

5400 DAMEN:

5400 NORTH DAMEN LLC,
an Illinois limited liability company

By: _____
Name: James Kolbe
Its: Manager

By: _____
Name: Philip McCaleb
Its: Manager

HURTZ:

HURTZ, LLC,
a Delaware limited liability company

By: _____
Name: James Kolbe
Its: Member

By: _____
Name: Philip McCaleb
Its: Member

By: _____
Name: Katherine Kolbe
Its: Member

By: _____
Name: Jennifer McCaleb
Its: Member

5400 DAMEN GUARANTORS:

James Kolbe, individually

Philip McCaleb, individually

Katherine C. Kolbe, individually

Jennifer McCaleb, individually

HURTZ GUARANTORS:

James Kolbe, individually

Philip McCaleb, individually

BANK:

NORTH SHORE COMMUNITY BANK &
TRUST

By: William P. Robin
Name: WILLIAM P. ROBIN
Title: SENIOR VICE PRESIDENT

[Notary pages attached, following]

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STATE OF IL)
COUNTY OF COOK) ss

I DEAN R. CHRISTOFANO, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that KATHERINE C. KOLBE, individually, and in her capacity as Member of HURTZ, L.L.C., a Delaware limited liability company, 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 her free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14 day of FEBRUARY, 2011.

[Signature]
Notary Public

My Commission Expires: 14 JUNE 13



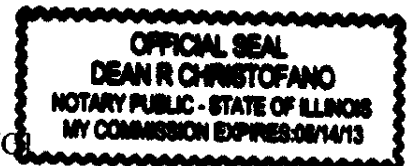
STATE OF IL)
COUNTY OF COOK) ss

I DEAN R. CHRISTOFANO, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JENNIFER McCALEB, individually, and in her capacity as Member of HURTZ, L.L.C., a Delaware limited liability company, 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 her free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14 day of FEBRUARY, 2011.

[Signature]
Notary Public

My Commission Expires: 14 JUNE 13



[ADDITIONAL NOTARY PAGE FOLLOWING]

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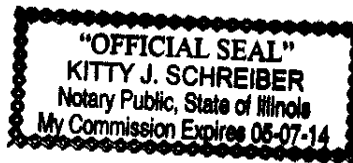
STATE OF IL)
COUNTY OF COOK)^{ss}

I Kitty J. Schreiber a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that William F. Robin personally known to me to be the sup of NORTH SHORE COMMUNITY BANK & TRUST, appeared before me this day in person and acknowledged that signed and delivered said instrument as own free and voluntary act on behalf of NORTH SHORE COMMUNITY BANK & TRUST, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24 day of February, 2011.

Kitty J. Schreiber
Notary Public

My Commission Expires: 5/7/14



Property of Cook County Clerk's Office

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EXHIBIT A

LEGAL DESCRIPTION – 5400 DAMEN PROPERTY

LOTS 21, 22 AND 23 IN BALMORAL-DAMEN SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST $\frac{1}{4}$ OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 10, 1928 AS DOCUMENT 9924185, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS: 5400 N. DAMEN, CHICAGO, IL 60625

PIN: 14-07-103-030-0000

Property of Cook County Clerk's Office

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EXHIBIT B

LEGAL DESCRIPTION - HURTZ PROPERTY

LOTS 18, 19, 20 IN BALMORAL-DAMEN SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST ¼ OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 10, 1928 AS DOCUMENT 9924185, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS: 5410 N. DAMEN, CHICAGO, IL 60625

PIN: 14-07-103-032-0000

Property of Cook County Clerk's Office