



1128422034

Doc#: 1128422034 Fee: \$50.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 10/11/2011 11:04 AM Pg: 1 of 8

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

Deutsch, Levy & Engel, Chartered
225 W. Washington Street, Suite 1700
Chicago, Illinois 60606
Attn: Aaron B. Zarkowsky

This space reserved for Recorder's use only.

PINS: 13-07-302-026-0000
13-07-302-028-0000

Commonly known as:
5103-07 N. Harlem, Chicago, Illinois

SECOND MODIFICATION OF LOAN DOCUMENTS

THIS SECOND MODIFICATION OF LOAN DOCUMENTS (this "Modification") is made as of the 28TH day of September, 2011, by and among Gendell Partners Carmen Harlem, LLC, an Illinois limited liability company ("Borrower"), Scott H. Gendell ("Guarantor") and **NORTHBROOK BANK & TRUST COMPANY**, an Illinois banking corporation, its successors and assigns ("Lender"), successor pursuant to a Purchase and Assumption Agreement by and between the FDIC, as Receiver of the Assets and Liabilities of First Chicago Bank & Trust ("First Chicago") pursuant to 12 U.S.C. 1821(D)(2)(A), as Seller and Lender as Buyer, dated July 8, 2011 (the "FDIC Agreement").

RECITALS:

A. First Chicago made a loan ("Loan") to Borrower in the principal amount of Four Hundred Twenty Thousand and no/100 Dollars (\$420,000) as evidenced by a Promissory Note dated December 28, 2010, in the principal amount of the Loan made payable by Borrower to the order of First Chicago ("Note").

B. The Note is secured by, among other things documents dated December 28, 2010, (i) that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing from Borrower to First Chicago recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on January 13, 2011, as Document No. 1101304213 ("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 from Borrower to First Chicago and recorded in the Recorder's Office on January 13, 2011, as Document No. 1101304214 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement from Borrower and Guarantor to First Chicago (the "Indemnity Agreement"); (iv) that certain Guaranty of Payment from Guarantor to First Chicago (the "Guaranty"); and (v) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the Guaranty, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

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C. Borrower desires to amend the Loan Documents in order to extend the Maturity Date and for the other purposes hereinafter set forth and the Lender, as successor to First Chicago as described aforesaid, has agreed to the Borrower's request upon the terms and conditions hereinafter set forth.

D. Borrower and Guarantor acknowledge the succession of the Lender to the rights under the Loan Documents of First Chicago pursuant to the FDIC Agreement.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove, (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 hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation and Definitions.** The foregoing recitals and all exhibits and schedules hereto constitute an integral part of this Modification, evidencing the intent of the parties in executing this Modification and describing the circumstances surrounding its execution. Accordingly, the recitals, exhibits and schedules are, by this express reference, made a part of the covenants hereof, and this Modification shall be construed in the light thereof. The capitalized terms not otherwise defined herein shall have the meanings provided in the Mortgage.

2. **Maturity Date.** The Maturity Date of the Note is extended to December 28, 2011. Any reference in the Note, the Mortgage or any other Loan Document to the Maturity Date shall mean December 28, 2011.

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

(a) The representations and warranties in 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 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 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 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.

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(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, and Borrower and Guarantor recognize the Lender as successor to the Note and other Loan Documents from First Chicago pursuant to the FDIC Agreement.

(f) Borrower validly exists 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 and the Guarantor.

4. **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 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.

5. **Conditions Precedent.** The agreement of Bank to amend the Loan Documents and is subject to the following conditions precedent:

(a) Bank shall have received this Modification duly executed by the Borrower and Guarantor.

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

(c) Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. SA 4724396 (the "**Title Policy**"), as of the date this Modification is recorded, reflecting the recording of this Modification 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.

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

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(e) The Lender shall have received such other documents as may be reasonably requested by the Lender or its counsel.

6. **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 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.

(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 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 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 "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to 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

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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 Modification.

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

(Signature Page Follows)

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IN WITNESS WHEREOF, the parties hereto have executed this Second Modification of Loan Documents dated as of the day and year first above written.

BORROWER:

Gendell Partners Carmen Harlem, LLC, an Illinois limited liability company

By: *Scott H. Gendell*
Name: Scott H. Gendell
Title: Manager

GUARANTOR:

Scott H. Gendell
Scott H. Gendell

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

I Miriam Martinez, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Scott H. Gendell, individually and as the Manager of Gendell Partners Carmen Harlem, LLC, 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 6th day of October, 2011.

Miriam Martinez
Notary Public

My Commission Expires: 12/17/2013



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EXHIBIT A

THE PROPERTY

LOT 12 (EXCEPT THE NORTH 5.50 FEET THEREOF) AND LOT 13 IN BLOCK 6 IN VOLK BROTHERS GREATER HARLEM AVENUE SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:
THE SOUTH 9.50 FEET OF LOT 10, ALL OF LOT 11 AND THE NORTH 5.50 FEET OF LOT 12 IN BLOCK 6 IN VOLK BROTHERS GREATER HARLEM AVENUE SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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