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This Instrument Prepared By
and Return To:

MARK K. SOMERSTEIN, ESQ.
Ruden McClosky P.A.
P.O. Box 1900
Fort Lauderdale, Florida 33302

Doc#: 1201933042 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/19/2012 09:30 AM Pg: 1 of 8

PROPERTY CLERK
1833333

AMENDED NOTE AND MORTGAGE MODIFICATION AGREEMENT

THIS AMENDED NOTE AND MORTGAGE MODIFICATION AGREEMENT ("Agreement") is made by and between BARNARD, LTD., an Illinois corporation ("LTD"), and JUNE D. BARNARD (jointly and severally, "Mortgagor"), RONALD L. BARNARD and JUNE D. BARNARD (jointly and severally, the "Guarantors") (the Mortgagor and the Guarantors are collectively, the "Obligors"), and BANK OF AMERICA, N.A., its nominees and/or assigns ("Lender") effective June 30, 2011.

RECITALS:

A. Mortgagor is indebted to the Lender pursuant to: (i) that certain promissory note dated July 3, 2008, executed by LTD in favor of Lender in the original principal amount of \$475,000.00 (the "\$475,000 Note"); (ii) that certain amended and restated promissory note dated June 30, 2009, executed by Mortgagor in favor of Lender in the original principal amount of \$50,000.00 (the "\$50,000 Note"); and (iii) that certain promissory note dated September 10, 2010, executed by June D. Barnard in favor of Lender in the original principal amount of \$106,000.00 (the "\$106,000.00 Note") (collectively, the "Indebtedness").

B. The Indebtedness is secured by, *inter alia*, that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated July 3, 2008, recorded under Document Number 0821305128, with the Recorder of Deeds, Cook County, Illinois, as amended (collectively, the "Mortgage").

C. The Guarantors guaranteed the Indebtedness pursuant to, *inter alia*, their respective execution of their respective Guaranties each dated (i) July 3, 2008, as reaffirmed and (ii) September 10, 2011 (collectively, the "Guaranty").

D. The Indebtedness, the Mortgage, the Guaranty, and any other documents executed in connection with the foregoing are hereinafter collectively referred to as the "Loan Documents".

E. The Obligors have requested and the Lender has agreed to modify the terms of the Loan Documents as more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing, and for TEN DOLLARS (\$10) and other good and valuable considerations, the parties agree as follows:

1. The foregoing recitations are true and correct and are incorporated herein by reference.

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2. The provisions of this Agreement shall control in the event of any conflict with the provisions of the Loan Documents, the unaffected provisions of which are specifically reaffirmed and incorporated herein by reference.

3. The Indebtedness is restated and modified by deleting the terms and provisions of the \$50,000 Note and substituting in lieu thereof the Amended and Restated Promissory Note of even date herewith ("Amended Note") in the original principal amount of \$48,000.00. The Indebtedness is further restated and modified to include, without limitation, all obligations of the Borrower incurred by Borrower under any agreement between Borrower and Lender or any Lender affiliate now existing or hereafter entered into, which provides for an interest rate, currency, equity, credit or commodity swap, cap, floor or collar, spot or forward foreign exchange transaction, cross currency rate swap, currency option, any combination of, or option with respect to, any of the foregoing or any similar transactions, for the purpose of hedging Borrower's exposure to fluctuations in interest rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices (including any such or similar agreement or transaction entered into by Lender or any Lender affiliate thereof in connection with any other agreement or transaction between Borrower and Lender or any Lender affiliate thereof) (each a "Swap Agreement").

4. The Mortgage, as amended by this Agreement, shall continue to secure the Indebtedness.

5. The Obligors acknowledge and agree that the Lender shall not be obligated to further modify the Indebtedness or the Mortgage. In conjunction with the foregoing, Lender shall not be obligated to make any additional advances under the Loan Documents.

6. AS A MATERIAL INDUCEMENT FOR LENDER TO EXECUTE THIS AGREEMENT, THE OBLIGORS DO HEREBY RELEASE, WAIVE, DISCHARGE, COVENANT NOT TO SUE, ACQUIT, SATISFY AND FOREVER DISCHARGE LENDER, ITS OFFICERS AND DIRECTORS, EMPLOYEES AND AGENTS AND ITS AFFILIATES, AND ASSIGNS FROM ANY AND ALL LIABILITY, CLAIMS, COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES, AGREEMENTS, PROMISES AND DEMANDS WHATSOEVER IN LAW OR IN EQUITY WHICH THE OBLIGORS EVER HAD, OR HAVE, OR WHICH ANY PERSONAL REPRESENTATIVE, SUCCESSOR, HEIR OR ASSIGN OF OBLIGORS HEREAFTER CAN, SHALL OR MAY HAVE AGAINST THE LENDER, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, AND ITS AFFILIATES AND ASSIGNS, FOR, UPON OR BY REASON OF ANY MATTER, CAUSE OR THING WHATSOEVER RELATED TO THE LOAN DOCUMENTS THROUGH THE DATE THIS AGREEMENT HAS BEEN EXECUTED. OBLIGORS FURTHER EXPRESSLY AGREE THAT THE FOREGOING RELEASE AND WAIVER AGREEMENT IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF FLORIDA. IN ADDITION TO, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AND IN CONSIDERATION OF THE LENDER'S EXECUTION OF THIS AGREEMENT, OBLIGORS COVENANT WITH AND WARRANT UNTO LENDER, AND ITS AFFILIATES AND ASSIGNS, THAT THERE EXISTS NO CLAIMS, COUNTERCLAIMS, DEFENSES, OBJECTIONS, OFFSETS OR CLAIMS OF OFFSETS AGAINST LENDER RELATED TO THE LOAN DOCUMENTS OR THE OBLIGATION OF OBLIGORS TO PAY THE INDEBTEDNESS TO LENDER WHEN AND AS THE SAME BECOMES DUE AND PAYABLE.

7. The Obligors hereby agree that, in consideration of the recitals and mutual covenants contained herein, and for other good and valuable consideration, including the forbearance of Lender from exercising its rights and remedies otherwise available to it, as hereby amended, the

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receipt and sufficiency of which are hereby acknowledged, in the event the Obligors (or any of them) shall: (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition (which is not dismissed within ninety [90] days from the filing) under Title 11 of the U.S.C. Code, as amended; (ii) be the subject of any order for relief issued under such Title 11 of the U.S.C. Code, as amended (which is not dismissed within ninety [90] days from the filing); (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency or other relief for debtors (which is not dismissed within ninety [90] days from the filing); (iv) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator; (v) be the subject of any order, judgment or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency or relief for debtors (which is not dismissed within ninety [90] days from the filing); and/or (vi) be the subject of any action (which is not dismissed within ninety [90] days from the filing) to set aside or otherwise prevent the provisions of the Agreement (subparagraphs [i] – [vi] above are hereinafter collectively defined as "Bankruptcy Proceedings"), Lender shall thereupon be entitled to relief from any automatic stay imposed by Section 362 of Title 11 of the U.S.C. Code, as amended, or otherwise, on or against the exercise of the rights and remedies otherwise available to Lender as provided in the Loan Documents and as otherwise provided by law.

8. Obligors agree to pay to Lender any and all documentary stamps and/or intangible taxes and all interest and penalties associated therewith which may be assessed on account of the execution and/or recording of this Agreement. Obligors shall pay such sums immediately upon receipt of notice of such amounts from Lender or its assigns. In the event Obligors fail to pay such sums, Lender or its assigns may, at its option, pay such taxes and/or documentary stamps. Any such payment by Lender or its assigns shall be added to the Indebtedness and shall bear interest from the date advanced to the date of recovery at the maximum rate permissible under Florida law. If Obligors fail to pay any and all documentary stamps and/or intangible taxes and any interest or penalties associated therewith which may be assessed on account of the execution and/or recording of this Agreement, it shall be deemed to be a default under the terms hereof and shall immediately accelerate the principal balance due hereunder, together with accrued interest.

The Obligors shall have the right to contest the foregoing charges, provided such does not adversely affect the Lender or the Loan Documents.

9. The Guarantors hereby confirm that the Guaranty remains in full force and effect and shall, *inter alia*, guarantee the repayment of the Amended Note. The Guarantors acknowledge and agree that the failure of any of the Guarantors to execute this Agreement shall not affect the obligation of the remaining Guarantors.

10. This Agreement shall not be construed more strictly against either party by virtue of the preparation hereof.

11. Except as herein specifically provided, all of the terms, provisions and representations of the Loan Documents are hereby specifically reaffirmed by the Obligors and are incorporated herein by this reference. THE OBLIGORS (AND EACH OF THEM) HEREBY AGREE AND CONFIRM THAT, AS OF THE DATE HEREOF, THE LOAN DOCUMENTS ARE IN FULL FORCE AND EFFECT. THIS AGREEMENT SUPERSEDES ALL PRIOR NEGOTIATIONS AND/OR CORRESPONDENCE RELATING TO THE LOAN DOCUMENTS.

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12. Time is of the essence under the Loan Documents and this Agreement.
13. The Obligors warrant and represent that all of the parties executing this Agreement on behalf of the Obligors are duly authorized to execute this Agreement and that this Agreement is valid and binding upon the Obligors in accordance with its terms.
14. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute one (1) and the same agreement. This Agreement may be executed and delivered via telecopy.
15. This Agreement is not intended to be a novation, but merely to evidence a modification, and it is not the intention of the parties to create a novation of the Loan Documents.
16. This Agreement shall not be binding upon the Lender nor shall this Agreement constitute an offer by the Lender until such time as this Agreement is fully executed.
17. A default or breach of a representation or warranty by the Obligors, or any of them, under this Agreement shall constitute a default under the Loan Documents.
18. The obligations of the Obligors under this Agreement shall be joint and several. The reference to the Obligors hereunder shall, at the Lender's option, be to all or any of the Obligors.
19. **WAIVER OF JURY TRIAL. BORROWER AND LENDER EACH WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (i) UNDER THE MORTGAGE, THIS MODIFICATION, OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THE MORTGAGE OR (ii) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THE MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS AGREEMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.**

(SIGNATURE PAGES FOLLOW)

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IN WITNESS WHEREOF, Obligors and Lender have executed this Agreement as of the day and year set forth above.

MORTGAGOR:

BARNARD, LTD., an Illinois Corporation

By: *June D. Barnard* (SEAL)

June D. Barnard, President

Address: 375 West Erie, Suite C-101
Chicago, IL 60601

June D. Barnard
JUNE D. BARNARD

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by JUNE D. BARNARD, Individually and as President of BARNARD, LTD., freely and voluntarily under authority duly vested in her by said company. She is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 12th day of DECEMBER, 2011.



My Commission Expires: 7/18/13

Jeanne M. Cooper
Notary Public

JEANNE M. COOPER
Typed, printed or stamped name of Notary Public

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LENDER:

BANK OF AMERICA, N.A.

By: [Signature] (SEAL)
 Print Name: ZAK ODHWANI
 Title: SVP
 Address: 280 East Palmetto Trk Rd. Boca Raton FL 33432

STATE OF FLORIDA
 COUNTY OF PALM BEACH SS:

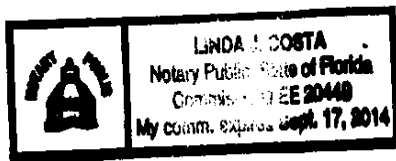
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by ZAK ODHWANI, the SVP of BANK OF AMERICA, N.A., a national banking association, freely and voluntarily under authority duly vested in him by said corporation. He is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 21 day of DECEMBER, 2011.

[Signature]
 Notary Public

 Typed, printed or stamped name of Notary Public

My Commission Expires:



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GUARANTORS

Ronald L. Barnard
RONALD L. BARNARD

Jane D. Barnard
JANE D. BARNARD

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by RONALD L. BARNARD who is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 12 day of DECEMBER, 2011.



Jeanne M. Cooper
Notary Public

JEANNE M. COOPER
Typed, printed or stamped name of Notary Public

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UNIT C-101 IN THE ERIE CENTRE CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED LAND:

PORTIONS OF CERTAIN LOTS IN BLOCK 1 OF ASSESSOR'S DIVISION OF THAT PART SOUTH OF ERIE STREET AND EAST OF THE CHICAGO RIVER OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; WHICH SURVEY IS ATTACHED AS AN EXHIBIT OF THE DECLARATION OF CONDOMINIUM, AS AMENDED FROM TIME TO TIME, RECORDED SEPTEMBER 29, 1997 AS DOCUMENT NUMBER 97719736.

Note: For informational purposes only, the land is known as:

375 West Erie Street, Unit C-101
Chicago, IL 60610

TAX #

*17-09-127-039-1001
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