

# UNOFFICIAL COPY



Doc#: 1206904010 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/09/2012 08:24 AM Pg: 1 of 10

THIS DOCUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:

Courtney E. Mayster  
MUCH SHELIST  
191 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606.1615

Property Addresses:  
1300 West Randolph Street  
Chicago, Illinois 60607

1302-08 West Randolph Street  
Chicago, Illinois 60607

PINS:

17-08-325-022-0000  
17-08-325-023-0000

This space reserved for Recorder's use only

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## MODIFICATION OF MORTGAGES AND LOAN DOCUMENTS

THIS MODIFICATION OF MORTGAGES AND LOAN DOCUMENTS (this "Modification") is dated as of the 8<sup>th</sup> day of December, 2011 by and among 1300 RANDOLPH LLC, an Illinois limited liability company (the "1300 Borrower"), 1302-08 RANDOLPH LLC, an Illinois limited liability company (the "1302 Borrower"; the 1300 Borrower and the 1302 Borrower are herein collectively referred to as, the "Borrower"), JONATHAN K. MARKOFF, individually (the "Guarantor") and THE PRIVATEBANK AND TRUST COMPANY, its successors and assigns (the "Lender").

### RECITALS:

A. Lender has made a loan (the "Loan") to Borrower in the original principal amount of One Million Eight Hundred Sixty Seven Thousand Five Hundred and 00/100 Dollars (\$1,867,500.00). The Loan is evidenced by a certain Promissory Note dated May 12, 2008 made by Borrower and payable to Lender in the original principal amount of the Loan, as amended and/or restated from time to time (the "Note").

B. The Note is secured by, among other things, (i) that certain Mortgage dated as of May 12, 2008 from the 1300 Borrower to Lender and recorded with the Cook County, Illinois Recorder (the "Recorder's Office") on May 21, 2008 as Document No. 0814233136 (the "1300 Mortgage"), which 1300 Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto (the "1300 Property"); (ii) that certain Assignment of

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Rents Leases dated as of May 12, 2008 from the 1300 Borrower to the Lender and recorded in the Recorder's Office on May 21, 2008 as Document No. 0814233137 (the "1300 Assignment of Rents"); (iii) that certain Mortgage dated as of May 12, 2008 from the 1302 Borrower to Lender and recorded with the Recorder's Office on May 21, 2008 as Document No. 0814233138 (the "1302 Mortgage;" collectively with the 1300 Mortgage, referred to as the "Mortgage"), which 1302 Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto (the "1302 Property"); (iv) that certain Assignment of Rents Leases dated as of May 12, 2008 from the 1302 Borrower to the Lender and recorded in the Recorder's Office on May 21, 2008 as Document No. 0814233139 (the "1302 Assignment of Rents"); and (v) certain other loan documents (the Note, the 1300 Mortgage, the 1300 Assignment of Rents, the 1302 Mortgage, the 1302 Assignment of Rents, the Guaranty (as hereinafter defined) and the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to in this Modification as the "Loan Documents"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Documents.

C. The Note is further secured by a Commercial Guaranty dated May 12, 2008 from Guarantor (the "Guaranty").

D. Guarantor is the manager of Borrower and the manager and sole member of the sole member of Borrower, and it is in the best interest of the Guarantor to execute this Modification.

E. Borrower and Guarantor have requested that Lender extend and amend the Loan in accordance with the terms and set forth below.

## AGREEMENTS:

NOW, THEREFORE, in consideration of: (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Modification); (ii) the agreement by Lender to modify the Loan Documents, as provided herein; (iii) agreement to pay Lender's reasonable expenses, including all of Lender's reasonable attorneys fees and costs in connection with this Modification; (iv) the covenants and agreements contained herein; (v) the Guarantor's reaffirmation of the Guaranty with respect to the Loan as extended and amended herein; and (vi) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Maturity Date. The Maturity Date of the Loan shall be amended and extended to May 1, 2012, subject to the extension of the Maturity Date as set forth in Section 3 of the Note Modification Agreement (as hereinafter defined).

2. Cross-Collateralization. The 1300 Property and any and all collateral pledged as security in favor of Lender pursuant to the 1300 Mortgage secures not only the indebtedness, liabilities and obligations, howsoever arising or created, of the 1300 Borrower to Lender, but also any indebtedness, liabilities and obligations, howsoever arising or created, of the 1302

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Borrower to Lender. The 1302 Property and any and all collateral pledged as security in favor of Lender pursuant to the 1302 Mortgage secures not only the indebtedness, liabilities and obligations, howsoever arising or created, of the 1302 Borrower to Lender, but also any indebtedness, liabilities and obligations, howsoever arising or created, of the 1300 Borrower to Lender.

3. Cross-Default. The occurrence of a Default (as defined in the 1300 Mortgage) shall be deemed to be a Default under the 1302 Mortgage, and the occurrence of a Default (as defined in the 1302 Mortgage) shall be deemed to be a Default under the 1300 Mortgage.

4. Amendment of Note. The Note shall be amended to extend the Maturity Date as set forth in that certain Note Modification Agreement of even date herewith executed by Borrower and Lender (the "Note Modification Agreement").

5. Principal Balance of Note. Borrower and Lender acknowledge that the current principal balance of the Note is One Million Seven Hundred Fifty Six Thousand Two Hundred and 00/100 Dollars (\$1,756,200.00).

6. Reaffirmation and Amendment of Guaranty. The Guaranty executed by Guarantor, shall be deemed to be amended as follows:

- a. To reflect the extension of the Maturity Date of the Loan and the other amendments to the Loan Documents.
- b. All other provisions of the Guaranty remain in full force and effect. Guarantor agrees to execute this Modification for purposes of ratifying the modifications to the Loan set forth herein and to confirm that the Guaranty is in full force and effect.

7. Representations and Warranties of Borrower and Guarantor. Each Borrower and Guarantor hereby represent, covenant and warrant to Lender as follows:

- a. The representations and warranties in the Loan Documents are true and correct as of the date hereof.
- b. There is currently no Event of Default (as defined in the Loan Documents) under the 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 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 each Borrower and Guarantor 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, any Guarantor or any other party whose financial statement has been delivered to

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Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

- e. As of the date hereof, neither Borrower nor Guarantor has any claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.
- f. 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 and Guarantor. This Modification has been duly executed and delivered on behalf of Borrower and Guarantor.

8. Release by Borrower and Guarantor. Each Borrower and Guarantor hereby releases and forever discharges Lender and its past and present officers, directors, employees, agents, attorneys, predecessors-in-interest, parents, subsidiaries, affiliates and assigns of and from any and all actions, claims, and causes of action, suits, debts, liabilities, dues, accounts, demands, obligations, costs, expenses, losses, damage and indemnities of every kind or nature whatsoever, whether known or unknown, suspected or unsuspected, contingent or fixed, in law or in equity, which any Borrower or Guarantor has, may have had, own or hold, or at any time heretofore had, may have had, owned or held, whether based on contract, tort, statute, or other legal or equitable theory of recovery, relating to, or arising out of the Loan, the Note, the Loan Documents, this Modification, the 1300 Property or the 1302 Property.

9. Waiver of Defenses. Each Borrower and Guarantor acknowledges that neither Borrower nor Guarantor has any defenses, offsets, or counterclaims under the Loan, the Note or the Loan Documents. To the extent that any such defenses, offsets, or counterclaims exist as of the date hereof, they are hereby waived and released in consideration of Borrower's and Guarantor's agreement to amend the Loan.

10. 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 a date down endorsement to loan policy no. 1401-008442114 (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.

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

12. Miscellaneous.

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

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- b. This Modification shall not be construed more strictly against Lender than against Borrower merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Modification, and Borrower and Lender each acknowledge and waive 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 nor shall privity of contract be presumed to have been established with any third party.
- d. Borrower 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 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 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 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 Borrower's and Guarantor's obligations under this Modification.

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[REMAINDER OF PAGE BLANK-SIGNATURE PAGE FOLLOWS]

COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_

COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_

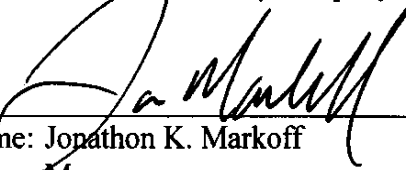
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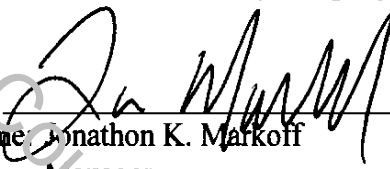
IN WITNESS WHEREOF, the parties hereto have executed this Modification of Mortgages and Loan Documents dated as of the day and year first above written.

BORROWER:

1300 RANDOLPH LLC,  
an Illinois limited liability company

By:   
Name: Jonathon K. Markoff  
Its: Manager

1302-08 RANDOLPH LLC,  
an Illinois limited liability company

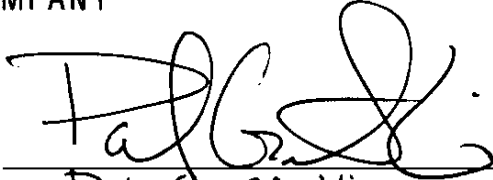
By:   
Name: Jonathon K. Markoff  
Its: Manager

GUARANTOR:

  
JONATHON K. MARKOFF, individually

LENDER:

THE PRIVATEBANK AND TRUST  
COMPANY

By:   
Name: Paul GRUSECKI  
Its: OFFICER

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STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, Nicole H. Chery, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that **JONATHON K. MARKOFF**, individually and as the Manager of **1300 RANDOLPH LLC**, an Illinois limited liability company, and **1302-08 RANDOLPH LLC**, an Illinois limited liability company, known to me to be the same person whose name is subscribed to the foregoing instrument as such individual and Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27 day of February, 2012.

Nicole Hemphill Chery  
Notary Public

My Commission Expires:

May 26, 2015



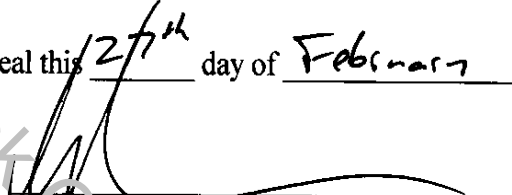


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STATE OF ILLINOIS        )  
   ) SS.  
 COUNTY OF COOK         )

The undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Paul Grusecki, the Officer of THE PRIVATEBANK AND TRUST COMPANY, an Illinois banking corporation, who 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 as such ID, he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said banking corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of February, 2012.

  
 \_\_\_\_\_  
 Notary Public

My Commission Expires:

2/10/15



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## **EXHIBIT A** **LEGAL DESCRIPTION**

**PARCEL 1:**

THE NORTH 25.00 FEET OF THE SOUTH 60.00 FEET OF LOT 4 IN THE ASSESSOR'S DIVISION OF LOTS 15 AND 16 IN BLOCK 1 IN SAWYER'S ADDITION TO CHICAGO IN SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

LOT 3 AND THE NORTH 40.00 FEET OF LOT 4 AND ALL OF LOTS 5 TO 8, INCLUSIVE AND THE ALLEY NORTH OF AND ADJOINING SAID LOTS 4, 5, 6, 7, 8 AND THE WEST OF THE EAST LINE OF LOT 6 AFORESAID, EXTENDING NORTH ALL IN THE ASSESSOR'S DIVISION OF LOTS 15 AND 16 IN BLOCK 1 IN SAWYER'S ADDITION TO CHICAGO IN SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART THEREOF TAKEN FOR WIDENING OF RANDOLPH STREET), IN COOK COUNTY, ILLINOIS.

1300 West Randolph Street  
Chicago, Illinois 60607

1302-08 West Randolph Street  
Chicago, Illinois 60607

17-08-325-022-0000  
17-08-325-023-0000

Proprietor of Cook County Clerk's Office