

UNOFFICIAL COPY



1525726032

Prepared By:

Crowley & Lamb, P.C.
221 North LaSalle Street, Suite 1550
Chicago, Illinois 60601

Doc#: 1525726032 Fee: \$56.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 09/14/2015 11:35 AM Pg: 1 of 10

Mail to:

Crowley & Lamb, P.C.
221 N. LaSalle Street, Suite 1550
Chicago, Illinois 60601
Attn: Iscel Benavides

This space reserved for Recorder's use only

SECOND MODIFICATION OF LOAN DOCUMENTS

THIS SECOND MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is executed as of August 18, 2015, by and among **Allied Development, L.L.C.**, an Illinois limited liability company ("Borrower"), having an address of 200 W. Madison Street, Suite 4200, Chicago, IL 60606; **George D. Hanus** ("Guarantor") having an address of 9050 North Keystone, Skokie, IL 60076; and **PNC Bank, National Association**, successor to National City Bank successor by merger to MIDAMERICA BANK, FSB, its successors and assigns ("Lender"), having an address of 1900 East 9th Street, Mailstop B7-YB13-22-1, Cleveland, OH 44114.

RECITALS:

A. Lender made a loan (the "Loan") to Borrower as evidenced by a Promissory Note dated October 12, 2007, in the original principal amount of \$457,412.00 from Borrower in favor of Lender (as amended, modified or replaced from time to time, including the CIT (defined below), the "Note"), which amended and replaced but was not a repayment or novation of that certain Promissory Note dated July 19, 2004 in the original principal amount of \$500,000.00 from Borrower in favor of Lender, as modified by that certain Change in Terms Agreement dated August 1, 2007. The Loan is further evidenced by that certain Business Loan Agreement dated October 12, 2007 between Borrower and Lender (as amended, modified or replaced from time to time, the "Loan Agreement"). The Note is secured, among other things, by a Mortgage dated July 19, 2004 (as amended, modified or replaced from time to time, including that certain Modification of Mortgage dated October 12, 2007 recorded with the Cook Co., IL Recorder as Document No. 0730246061, the "Mortgage") executed by Borrower in favor of Lender and recorded with the Cook Co., IL Recorder as Document No. 0420911175 against the real estate legally described on Exhibit A hereto (the "Property") and a Commercial Guaranty ("Original Guaranty") from the Guarantor in favor of Lender. In addition to the other terms of that certain Modification of Loan Documents ("Modification") dated August 29, 2014 among the parties hereto, the Borrower executed a Change in Terms Agreement ("CIT") dated August 29, 2014 in favor of Lender and Guarantor executed that certain Amended and Restated Limited Guaranty and Suretyship Agreement ("Guaranty") dated August 29, 2014

S
P
S
SC
INT

Y
10
N
Y
[Signature]

Box 400

HYNES # 82-25-201-21

UNOFFICIAL COPY

in favor of Lender. The Note, the Mortgage, the Loan Agreement, the Guaranty, the Modification, this Agreement and all other documents evidencing or securing the Loan, as amended, modified or replaced from time to time, are hereinafter collectively referred to as the "Loan Documents". Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Loan Documents.

B. The current principal balance on July 28, 2015 of the Note is \$285,615.69 and after giving effect the Closing Loan Payment (defined below) shall be \$271,334.69. Certain other amounts, including accrued interest and attorneys' fees and costs, are also owed under the Note and the other Loan Documents. There shall be no further advances of loan proceeds the Loan.

C. The Borrower and Guarantor have requested that Lender extend the Maturity Date of the Loan until August 1, 2016, among other things, and Lender is willing to so extend the Maturity Date of the Loan on the terms and conditions more fully set forth hereinafter and in the Amended Note (defined below).

AGREEMENTS:

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

1. **Modifications to Loan Documents.** The following modifications are hereby made to Note and the other the Loan Documents:

(a) **Extend Maturity.** Lender and Borrower agree that the Maturity Date for the Loan shall hereby be amended and extended until August 1, 2016. All references in any and all Loan Documents to "Maturity Date" or words of similar import shall now mean August 1, 2016. Borrower agrees that the Loan, together with all obligations under the Loan Documents, shall be due and payable on such Maturity Date, or such earlier date that the Loan and all other obligations of Borrower to Lender under the Loan Documents shall be due and payable (whether by acceleration or otherwise).

(b) **Interest Rate and Payments Required on Loan.** Notwithstanding any provision to the contrary contained in the Loan Documents, the interest rate shall be as set forth in the Modification and interest and principal payments required on the Loan shall be as follows:

(i) **Interest and Principal Payment Terms.** Principal shall be due and payable in consecutive monthly installments in the amount of \$1,000.00 each, commencing on August 3, 2015 and continuing on the same day of each month thereafter. Accrued interest on the Loan shall be payable at the same times as the principal payments. Any and all outstanding principal and accrued interest shall be due and payable in full on August 1, 2016.

If any payment under the Loan shall become due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing interest in connection with such payment. The Borrower hereby authorizes the Bank to charge the Borrower's deposit account at the Bank for any payment when due hereunder

(d) **Events of Default.** The terms "default" and "Event of Default" under the Loan Documents shall include (1) Borrower or Guarantor failing to comply with or perform any term,

UNOFFICIAL COPY

obligation, covenant or condition contained in any Loan Document, including this Agreement, or in any other agreement between Borrower and Lender, or Guarantor and Lender and (2) if any warranty, representation or statement made or furnished to Lender by Borrower or Guarantor under this Agreement is false or misleading in any respect either now or at the time made or furnished or becomes false or misleading at any time thereafter. A default under any Loan Document, including this Agreement, shall, at the option of Lender, constitute a default under the other Loan Documents, including this Agreement.

2. **Amendment of the Note.** The Note shall be amended by that certain Change In Terms Agreement of even date herewith executed by the Borrower (together with the Note, the "Amended Note"). The Amended Note amends the Note and is not a repayment or novation of the Note. All references in the Mortgage and any and all other Loan Documents to the "Note" or words of similar import shall now mean the Amended Note, as amended or replaced from time to time. Notwithstanding any provision to the contrary in the Loan Documents, the interest rate and principal and interest payments applicable to the Loan shall be as set forth above.

3. **Continuing Validity.** Except as expressly modified above, the terms of the original Mortgage, the Note and the other Loan Documents shall remain unchanged and in full force and effect and are legally valid, binding, and enforceable in accordance with their respective terms. Consent by Lender to this Agreement does not waive Lender's rights to require strict performance of the Mortgage (as amended above) nor obligate Lender to make any future modifications. Nothing in this Agreement shall constitute a satisfaction of the Note and other Loan Documents secured by the Mortgage. It is the intention of Lender to retain as liable all parties to the Mortgage and all parties, makers and endorsers to the Note, including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall not be released by virtue of this Agreement.

4. **Releases/Estoppel/Indemnity.** Borrower and Guarantor, in consideration of the execution of this Agreement, and the performance of all terms contained herein to be performed by Lender, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, do hereby remise, release and forever discharge, and by these presents, do for their successors, assigns, heirs, administrators, executors, personal representatives, agents, grantees, and successors in interest, remise, release and forever discharge Lender and all its parents, subsidiaries and affiliates and the officers, directors, agents, attorneys and employees of each (hereinafter "Releasees") from any and all claims, causes of action, suits, debts, liens, obligations, liabilities, demands, losses, defenses, offsets, costs or expenses (including attorneys' fees) of any kind, character or nature whatsoever, vested or contingent, at law, in equity or otherwise (collectively, "Claims"), which any or all of Borrower and Guarantor have or claim to have against Lender, arising out of or connected with any act or omission of Lender existing or occurring on or prior to the execution date of this Agreement, including without limitation, any claims, liabilities or undischarged obligations of Lender with respect to the indebtedness evidenced by the Loan Documents, which any or all of Borrower and/or Guarantor ever had, now have, or which may result from the past or present state of things, against or related to Releasees. Borrower and Guarantor agree to assume the risk of releasing any and all unknown, unanticipated or misunderstood Claims hereby. Borrower and Guarantor represent and warrant that Lender has duly performed or otherwise met all its duties and obligations under the Loan Documents or otherwise owed to Borrower and/or Guarantor, and that there are no Claims which Borrower or Guarantor have or claim to have against Lender, arising out of or connected with any act or omission of Lender existing or occurring on or prior to the date of this Agreement, including without limitation, any claims, liabilities or undischarged obligations of Lender with respect to the indebtedness evidenced by the Loan Documents. The Borrower further agrees to indemnify and hold the Bank and its officers, directors, attorneys, agents and employees harmless from any loss, damage, judgment, liability or expense (including attorneys' fees) suffered by or rendered against the Bank or any of them on account of any claims arising out of or

UNOFFICIAL COPY

relating to the obligations under the Loan Documents; provided, that the foregoing indemnity shall not apply to any claims, damages, losses, liabilities and expenses solely attributable to Bank's gross negligence or willful misconduct. The Borrower and Guarantor further state that each has carefully read the foregoing release, estoppel and indemnity, knows the contents thereof and grants the same as its own free act and deed.

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

- (a) The representations and warranties in the Note, the Loan Agreement, 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 Loan Documents) under the Note, the Mortgage or the other Loan Documents and neither Borrower nor Guarantor 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 Amended Note and the other Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower and Guarantor, as applicable, 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 or Guarantor from the date of the most recent financial statement received by Lender which could have a material adverse effect on any the Loan or the Property.
- (e) The execution and delivery of this Agreement and the Amended Note and the performance of the Loan Documents, as modified herein, have been duly authorized by all requisite action by or on behalf of Borrower, as applicable. This Agreement and the Amended Note have been duly executed and delivered on behalf of Borrower and Guarantor, as applicable, and are the legal, valid and binding obligations of Borrower and Guarantor, as applicable, enforceable in accordance with their terms.
- (f) The organizational documents of Borrower which have been furnished by Borrower to Lender in connection with the Loan Documents, are in full force and effect, reflect all amendments, modifications and replacements thereof and are the true, correct and complete documents relating to Borrower's creation and governance. The trust agreement of the HANUS PROPERTIES TRUST which was furnished by Borrower to Lender in connection with the Loan Documents, is in full force and effect, reflects all amendments, modifications and replacements thereof and is the true, correct and complete document relating to such trust's creation and governance.

6. **Conditions Precedent.** As conditions precedent to Lender's agreements contained herein and the effectiveness of this Agreement, Borrower shall (i) pay to Lender (A) all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, attorneys' fees and expenses, and (B) \$14,281.00 to be applied principal on the Loan (the "Closing Loan Payment"), a \$750.00 non-refundable closing fee, an appraisal fee of \$1,900.00 and the \$1,000.00 for August, 2015 Loan principal payment plus \$805.18 interest related to same, (ii) deliver to Lender a date down endorsement to Lender's title insurance policy for the Loan showing no exceptions thereto other than the Permitted Exceptions set forth in the Mortgage or other exceptions agreed to in writing by Lender, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage; (iii) execute and deliver and cause Guarantor to execute and deliver to Lender the signature pages to this Agreement properly notarized; (iv) execute and deliver to Lender the Change In Terms Agreement referred to above; (v) execute and deliver and cause the other necessary parties to execute and

UNOFFICIAL COPY

deliver the resolutions of Borrower, in the form presented by Lender, authorizing this Agreement and related matters; and (vi) execute and/or deliver and cause the other necessary parties to execute and/or deliver all other documents and instruments reasonably required by Lender in connection with this Agreement, including a settlement statement in the form prepared by Lender.

7. **Anti-Money Laundering/International Trade Law Compliance.** The Borrower represents and warrants to the Bank, as of the date of this Agreement, the date of any renewal, extension or modification of the Loan, and at all times until the Loan has been terminated and all amounts thereunder have been indefeasibly paid in full, that: (a) no Covered Entity (i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person; or (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority; (b) the proceeds of the Loan will not be used to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority; (c) the funds used to repay the Loan are not derived from any unlawful activity; and (d) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by, any laws of the United States, including but not limited to any Anti-Terrorism Laws. Borrower covenants and agrees that it shall immediately notify the Bank in writing upon the occurrence of a Reportable Compliance Event.

As used herein: “**Anti-Terrorism Laws**” means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time; “**Compliance Authority**” means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; “**Covered Entity**” means the Borrower, its affiliates and subsidiaries, all guarantors, pledgors of collateral, all owners of the foregoing, and all brokers or other agents of the Borrower acting in any capacity in connection with the Facility; “**Reportable Compliance Event**” means that any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; “**Sanctioned Country**” means a country subject to a sanctions program maintained by any Compliance Authority; and “**Sanctioned Person**” means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority

8. **USA PATRIOT Act Notice.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each Borrower that opens an account. What this means: when the Borrower opens an account, the Bank will ask for the business name, business address, taxpayer identifying number and other information that will allow the Bank to identify the Borrower, such as organizational documents. For some businesses and organizations, the Bank may also need to ask for identifying information and documentation relating to certain individuals associated with the business or organization.

UNOFFICIAL COPY

9. Miscellaneous.

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

(b) This Agreement 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 Agreement, and Borrower Guarantor 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 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 signatories hereto state that they have read and understand this Agreement, 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 Agreement 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 Agreement, 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 Agreement. Except as expressly modified hereby, the terms of the Note and the other Loan Documents are and remain unmodified and in full force and effect. In the event of any inconsistency or conflict between this Agreement and the Loan Documents, the terms, provisions and conditions contained in this Agreement shall govern and control. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, unenforceable or invalid under any jurisdiction, such provision shall as to such jurisdiction, be severable and be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

(e) This Agreement 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 Amended Note, the Mortgage, and the other Loan Documents as amended hereby or pursuant hereto. 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) Borrower shall indemnify, defend, and hold Lender harmless from any and all claims asserted against Lender or the Property by any person, entity or governmental body, or arising out of or in connection with the Property or Improvements. Lender shall be entitled to appear in any proceedings to defend itself against such claims, and all costs and expenses attorneys' fees

UNOFFICIAL COPY

incurred by Lender in connection with such defense shall be paid by the Borrower to Lender. Lender shall, in its sole discretion, be entitled to settle or compromise any asserted claims against it, and such settlement shall be binding upon Borrower for purposes of this indemnification. All amounts paid by Lender under this paragraph shall be secured by Lender's Mortgage on the Property, shall be deemed an additional principal advance under the Loan, payable upon demand, and shall bear interest at the highest rate applicable to the Loan.

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

(i) Time is of the essence of Guarantor's and Borrower's obligations under this Agreement.

[SIGNATURE PAGE ATTACHED]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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

BORROWER:

LENDER:

Allied Development, L.L.C., an Illinois limited liability company

PNC BANK, NATIONAL ASSOCIATION

By: HANUS PROPERTIES TRUST, sole member

By: _____
George D. Hanus, trustee *George D. Hanus*

By: _____
Name: **Nicholas R. Wymer**
Its: **Vice President** *Nicholas R. Wymer*

GUARANTOR:

George D. Hanus *George D. Hanus*

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF Ohio)
) SS.
COUNTY OF Cuyahoga)

I, Donna M. Vanio a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Nicholas Rulmer vice president of **PNC BANK, NATIONAL ASSOCIATION**, known to me to be the same person whose name is subscribed to the foregoing instrument as officer, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary acts, and as the free and voluntary act of such bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19th day of August, 2015.

[Signature]
Notary Public

My Commission Expires



STATE OF ILLINOIS)
) SS.
COUNTY OF Wise)

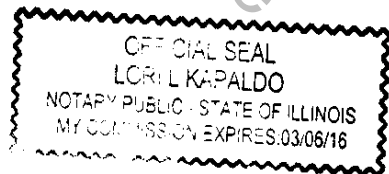
I, Lori L. Kapaldo, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that **George D. Hanus**, individually and trustee of the member of **Allied Development, L.L.C.** and known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of such company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18th day of August, 2015.

[Signature]
Notary Public

My Commission Expires:

03/06/16.



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LOTS 7 TO 12, BOTH INCLUSIVE, IN BLOCK 5 IN FORD CALUMET CENTER, A SUBDIVISION OF THE WEST 1376.16 FEET OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 36 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN(s): 30-07-308-012-0000, 30-07-308-013-0000, 30-07-308-014-0000,
30-07-308-015-0000, 30-07-308-016-0000 and 30-07-308-017-0000

The real estate commonly known as: 567 Torrence Avenue, Calumet City, IL 60409.

Property of Cook County Clerk's Office