

**A RESOLUTION APPROVING A SECOND MODIFICATION OF THE REVOLVING
LOAN AGREEMENT FOR CYCLE 9 LLC**

Draft Resolution No. 90/2010/11

WHEREAS, the Board of Aldermen approved a loan from the Carrboro Revolving Loan Fund to Cycle 9 LLC in the amount of \$68,540 for a term of 7 years at a 3% annual interest rate in March 2009; and

WHEREAS, the Board of Aldermen approved a loan modification in December 2009 to temporarily lower the payments owed by Cycle 9 LLC; and

WHEREAS, the applicant has requested a second modification to the loan agreement; and

WHEREAS, the applicant has requested to sell the property that currently secures the loan, use the proceeds from the sale to pay \$28,000 towards the current loan balance of \$54,127.36, and provide the equipment and inventory of the business as security for the remaining loan balance of \$26,127.36.

NOW THEREFORE, THE CARRBORO MAYOR AND BOARD OF ALDERMEN
RESOLVES THAT:

Section 1. Based upon the review of the information provided by the applicant, a second modification of the loan agreement is approved. The resulting loan balance of \$26,127.36 shall be paid back over a period of ___ years at a ___% annual interest rate. The monthly payment amount of \$_____ shall begin affective May 1, 2011.

Section 2. This resolution shall become effective upon adoption.

**A RESOLUTION NOT APPROVING A SECOND MODIFICATION OF THE
REVOLVING LOAN AGREEMENT FOR CYCLE 9 LLC
Draft Resolution No. 90/2010/11**

WHEREAS, the Board of Aldermen approved a loan from the Carrboro Revolving Loan Fund to Cycle 9 LLC in the amount of \$68,540 for a term of 7 years at a 3% annual interest rate in March 2009; and

WHEREAS, the Board of Aldermen approved a loan modification in December 2009 to temporarily lower the payments owed by Cycle 9 LLC; and

WHEREAS, the applicant has requested a second modification to the loan agreement; and

WHEREAS, the applicant has requested to sell the property that currently secures the loan, use the proceeds from the sale to pay \$28,000 towards the current loan balance of \$54,127.36, and provide the equipment and inventory of the business as security for the remaining loan balance of \$26,127.36.

NOW THEREFORE, THE CARRBORO MAYOR AND BOARD OF ALDERMEN
RESOLVES THAT:

Section 1. Based upon the review of the information provided by the applicant, a second modification of the loan agreement is not approved.

Section 2. This resolution shall become effective upon adoption.

MEMORANDUM

TO: Steve Stewart, Town Manager

FROM: Brough Law Firm; Robert E. Hornik, Jr.

RE: Cycle 9 Revolving Loan — Modification Agreement

DATE: March 11, 2011

We have been asked to prepare loan modification agreement for the Cycle 9, LLC revolving loan. This memorandum is to discuss the loan, the proposed modification and our position regarding the request.

Background

Cycle 9, LLC, Elise Giddings and Morgan Giddings (the individuals as “Guarantors”) and the Town entered into a Loan Agreement in early March 2009 pursuant to which the Town loaned the sum of \$68,540 to Cycle 9, LLC at 3% per annum interest. The Giddings’ acted as “Guarantors” for repayment of the loan, and they pledged their home located at 212 Wild Turkey Trail in Chapel Hill as security for the loan.

In about December 2009, the Borrower and the Giddings sought a Loan Modification Agreement which temporarily reduced the loan payment for about four months, then reinstituted the original payment schedule.

More recently, the Borrower and the Giddings have asked the Town to once again modify the Loan Agreement due to changed employment circumstances, which will cause them to relocate out of the area (perhaps out of state). They plan to sell the house on Wild Turkey Trail and to apply part of the proceeds of that sale to the outstanding loan balance. They propose to pledge as security for repayment of the loan the current inventory at the Cycle 9 bicycle shop on West Main Street. The Giddings’ will remain as personal guarantors of repayment of the loan amount.

Current Loan Status

At present, there is an outstanding loan balance of \$54,038.46. The Giddings propose that upon the sale of 212 Wild Turkey Trail, \$28,000 of the sale proceeds will be applied toward the outstanding loan balance, reducing that balance to \$54,038.46 (the proposed transaction date is March 22, 2011; by that time, additional interest will have accrued on the outstanding principle balance, and as a result the loan balance as of March 22, 2011 will be \$54,127.36).

Security For Loan Balance

When this loan was originally approved by the Town, after review by the Town's consultant and a recommendation from the Economic Sustainability Commission, the loan was to be secured by real property. In our opinion, this is the best form of security for our revolving loans.

The proposed modification would substitute a security interest in equipment and inventory at the bicycle shop for the real property. This security interest, which will be recorded by the filing of a UCC-1 Financing Statement, is less desirable and more difficult to enforce than a security interest in real property. We have not performed any research regarding whether there are, may be, any prior security interests in the inventory or equipment for Cycle 9. Cycle 9 and the Guarantors have made representations to us that the revolving loan will be the only outstanding debt related to Cycle 9. We have not confirmed this, and therefore do not make any particular representation to the Board concerning the priority of any possible security interest in inventory and property.

Conclusion

We take no position, and make no recommendation, concerning whether the Board of Aldermen should approve the Loan Modification Agreement. The ESC reviewed the request at its meeting on March 9th and had several concerns about the request. We have prepared the draft agreements (a Second Loan Modification Agreement and Security Agreement and a revised Promissory Note), and have discussed the possibility of reducing the amortization period from five years to four years and increasing the interest rate to some extent. We raised these possibilities in light of our view that the Town's risk in the loan will be increased due to the change in the security for the loan. We would also point out that even with a shorter amortization period and a higher interest rate, the Borrowers' monthly repayment amount will be reduced after the loan modification transaction, if the Board approves it.

NORTH CAROLINA
ORANGE COUNTY

SECOND LOAN MODIFICATION AGREEMENT and SECURITY AGREEMENT

This SECOND Loan Modification Agreement is entered into by and among Cycle 9, LLC, with a principal place of business at 601-D West Main Street, Carrboro, North Carolina 27510 (hereinafter referred to as the "Borrower"), Elise M.P. Giddings and Morgan C. Giddings (f/k/a Michael C. Giddings) (hereinafter "Guarantors"), and the Town of Carrboro, a North Carolina municipal corporation with its offices located at 301 West Main Street, Carrboro, North Carolina 27510 (hereinafter referred to as the "Town").

WHEREAS, on or about February __, 2009, the Borrower and the Town entered into a Loan Agreement, and Promissory Note pursuant to which Borrower borrowed from the Town and the Town loaned to Borrowers the principal amount of \$68,540 to be repaid by Borrowers together with three percent (3%) per annum interest, equal monthly payments in the amount of \$905.64; and

WHEREAS, Guarantors, by written Guaranty agreement dated February __, 2009, absolutely and unconditionally guaranteed payment of the full principal, interest and other sums due pursuant to the Loan Agreement and Promissory Note; and

WHEREAS, Guarantors also executed a Deed of Trust in favor of the Town, as beneficiary, to secure payment of the Loan amount, which Deed of Trust is recorded in the Orange County Registry at Deed Book 4684, at Page 264; and

WHEREAS, Borrower, with Guarantors' concurrence and approval, requested that the Town modify the Loan Agreement and the terms of the Promissory Note by temporarily reducing the amount of the loan payment to \$400 per month beginning with a loan payment due

on December 1, 2009 and continuing and including the loan payment due on March 1, 2010; and that beginning with the loan payment due on April 1, 2010 and continuing through the loan payment due on November 1, 2010, Borrower shall make monthly payments in the amount of \$1,160.64, and that beginning on December 1, 2010, Borrower shall resume making monthly payments in the amount of \$905.64 until all amounts due are paid in full in accordance with the original Loan Agreement; and

WHEREAS, the Borrower is currently indebted to the Town in the amount of \$55,187.18, which is the current outstanding loan balance; and

WHEREAS, the Borrower and the Guarantors have requested that the Town again modify the terms of the Loan Agreement and the Modified Loan Agreement, and the Promissory Note; and

WHEREAS, the Town desires to assist Borrower by granting its request for a Second Loan Modification Agreement in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of mutual promises herein, and for other good and valuable consideration the sufficiency and receipt of which is acknowledged by the parties, it is agreed as follows:

1. The Borrower and Town agree to modify the Loan Agreement, as modified by the Loan Modification Agreement, to adjust Borrower's monthly loan payment as follows:

- a. The Borrower shall pay to the Town from the proceeds of the sale of the real property now owned by Guarantors, which real property was pledged as security for the repayment of the loan made by the Town to Borrower, the sum of Twenty Eight Thousand and No Hundredths Dollars (\$28,000.00), which the Town shall apply first to past due interest and principal on the outstanding loan balance. The payment shall be made to the Town directly at closing, now scheduled for March 22, 2011, directly from the closing proceeds. After payment on March 22, 2011, the outstanding loan balance shall be \$27,189.18;

- b. Beginning with the loan payment due on May 1, 2011, and continuing on the first day of each month until the outstanding loan balance is paid in full on April 1, 2016, Borrower shall pay to the Town the sum \$ _____;
- c. Borrower shall execute a new Promissory Note in favor of the Town to reflect the modified payment schedule and amounts.

2. The Town shall provide a Satisfaction of Deed of Trust releasing the real property pledged by Guarantors as security for the original loan. Such Satisfaction of Deed of Trust shall be delivered by the Town to the attorney closing the sale transaction referred to in paragraph 1(a) above to be held in trust by such attorney, and to be released and recorded in the Orange County Registry only after a check in the amount of \$28,000.00 has been delivered to the Town.

3. Borrower does, by execution of this Second Loan Modification Agreement and Security Agreement, grant to the Town a security interest in all equipment and inventory at Borrower's facility located at 601 West Main Street, Suite D in Carrboro, North Carolina, including all equipment and inventory acquired by Borrower after the date of this Second Loan Modification Agreement and Security Agreement. Borrower shall execute such UCC Financing Statements as the Town may request in order to perfect the Town's security interest in all existing and after-acquired equipment and inventory.

4. Except as provided in paragraphs 1 through 3 above, and/or except as expressly or by implication modified by the terms of this Second Loan Modification Agreement and Security Agreement, the terms of the Loan Agreement and the Guaranty Agreement executed by Borrower, Guarantors and the Town on February ____, 2009, shall remain in full force and effect.

This the ____ day of March 2011.

CYCLE 9, LLC

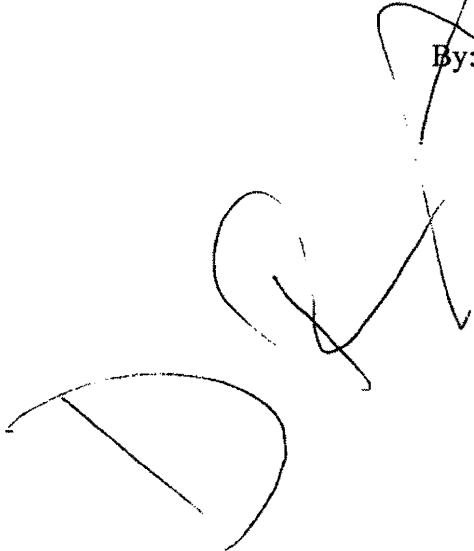
By: _____
Member/Manager

Elise Giddings, Guarantor

Morgan Giddings, Guarantor

TOWN OF CARRBORO

By: _____
Steve Stewart, Manager

A large, stylized handwritten signature in black ink, likely belonging to Steve Stewart, is written over the signature line and extends downwards and to the left.

SATISFACTION: The debt evidenced by
 This Note has been satisfied in full this
 _____ day of _____,
 Signed: _____

PROMISSORY NOTE

Carrboro, N.C.
 March _____, 2011

\$ _____ .00

FOR VALUE RECEIVED the undersigned, jointly and severally, promises to pay to the Town of Carrboro, a North Carolina municipality the principal sum of _____ and 00/100 DOLLARS (\$ _____ .00), with interest from March _____, 2011 at the rate of three percent (3%) per annum on the unpaid balance until paid or until default, both principal and interest payable in lawful money of the United States of America, at the office of the Town of Carrboro, North Carolina or at such other place as the legal holder may designate in writing. It is understood and agreed that additional amounts may be advanced by the holder hereof as provided in the instruments, if any, securing this Note and such advances will be added to the principal of this Note and will accrue interest at the above-specified rate of interest from the date of advance until paid. The principal and interest shall be due and payable as follows:

On or before May 1, 2011, and on the first day of each month until and including April 1, 2016 unless sooner paid in full, equal monthly payments of \$ _____, principal and interest.

If not sooner paid, the entire remaining indebtedness shall be due and payable on April 1, 2016.

If payable in installments, each such installment shall, unless otherwise provided, be applied first to payment of interest then accrued and due on the unpaid principal balance, with the remainder applied to the unpaid principal.

Unless otherwise provided, this Note may be prepaid in full or in part at any time without penalty or premium. Partial prepayments shall be applied to installments due in reverse order of their maturity.

In the event of (a) default in payment of any installment of principal or interest hereof as the same becomes due and such default is not cured within ten (10) days from the due date, or (b) default under the terms of any instrument securing this Note, and such default is not cured within fifteen (15) days after written notice to maker, then in either such event the holder may without further notice, declare the remainder of principal

sum, together with all interest accrued thereon and, the prepayment premium, if any, at once due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any other time. The unpaid principal of this Note and any part thereof, accrued interest and all other sums due under this Note and the Deed of Trust, if any, shall bear interest at the rate of twelve percent, (12%) per annum after default until paid.

All parties to this Note, including maker and any sureties, endorsers, or guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration of maturity and agree to continue to remain bound for the payment of principal, interest and all other sums due under this Note and the Deed of Trust notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note or by way of any extension or extensions of time for the payment of principal and interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice of consent of any of them.

Upon default the holder of this Note may employ an attorney to enforce the holder's rights and remedies and the maker, principal, surety, guarantor and endorsers of this Note hereby agree to pay to the holder reasonable attorney's fees not exceeding a sum equal to fifteen percent (15%) of the outstanding balance owing on said Note, plus all other reasonable expenses incurred by the holder in exercising any of the holder's rights and remedies upon default. The rights and remedies of the holder as provided in this Note and any instrument securing this Note shall be cumulative and may be pursued singly, successively, or together against the property described in the Deed of Trust or any other funds, property or security held by the holder for payment or security, in the sole discretion of the holder. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

This Note is to be governed and construed in accordance with the laws of the State of North Carolina.

IN TESTIMONY WHEREOF, the undersigned Borrower has executed this instrument as of the day and year first above written.

CYCLE 9, LLC

By: _____ (SEAL)
Elise M.P. Giddings, Member/Manager