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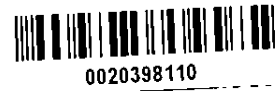
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2002-04-08 12:40:06

Cook County Recorder 35.00

Prepared by and after recording mail to:



Steven C. Roper  
Lord, Bissell & Brook  
115 S. LaSalle Street  
Chicago, IL 60603

- P.I.N. 17-17-208-001-0000
- 17-17-208-002-0000
- 17-17-208-005-0000
- 17-17-208-006-0000
- 17-17-208-007-0000
- 17-17-208-009-0000
- 17-17-208-010-0000
- 17-17-208-016-0000
- 17-17-208-017-0000
- 17-17-208-018-0000

7491318, 600, D2

Common Address: 21 South Peoria, Chicago, IL

**MEMORANDUM OF MODIFICATION TO MORTGAGE**

This Memorandum of Modification to Mortgage ("Memorandum") is entered into as of October 23, 2001, by and among H2O Plus, L.P., a Delaware limited partnership (whose sole general partner is H2O Plus, Inc., a Delaware corporation)(H2O Plus, L.P., herein, together with its successors and assigns, called the "Company") and American National Bank and Trust Company of Chicago, a national banking association (herein, together with its successors and assigns, called the "Bank").

**WITNESSETH:**

WHEREAS, the Company executed and delivered that certain Construction Mortgage, Assignment of Leases and Security Agreement, as heretofore amended, supplemented, modified confirmed or reaffirmed, (the "Mortgage") encumbering the Mortgaged Property (as defined therein), including without limitation the real estate legally described on Exhibit A attached hereto, which Mortgage was recorded on December 27, 1993, with the Recorder of Deeds of Cook County ("Recorder") as Document No. 03063992;

WHEREAS, the Company executed and delivered that certain Assignment of Leases, Rents and Profits as heretofore amended, supplemented, modified confirmed or reaffirmed, (the "Assignment of Leases") which Assignment of Leases was recorded on December 27, 1993, with the Recorder as Document No. 03063993;

WHEREAS, the Company executed and delivered that certain Memorandum of Modification ~0008588.DOC

**BOX 333-CTY**

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to Mortgage dated as of August 14, 1998, as recorded on December 16, 1998 with the Recorder as Document No. 08140613;

WHEREAS, the Company and Bank have entered into that certain Thirteenth Amendment to Restated Credit Agreement (the "Amendment", with terms used but not otherwise defined herein being used with the same meanings as therein defined) dated as of an even date herewith which, among other things, provides for certain amendments and modifications to the Mortgage and the Assignment of Rents;

WHEREAS, the Company and Bank desire to enter into and record this Memorandum to provide for and evidence the aforesaid modifications;

NOW THEREFORE, in consideration of the premises, covenants and agreements set forth herein, and Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals contained in the preamble hereof are hereby incorporated and made a part of this Memorandum as if fully set forth herein, and this Memorandum shall be construed in light of such recitals.

2. Amendment. The Mortgage and the Assignment of Leases are hereby amended such that, notwithstanding anything to the contrary therein, the mortgage, lien, encumbrance and security interest granted by the Company to the Bank under the terms of the Mortgage and the Assignment of Leases hereby secures the full and timely payment of all indebtedness and obligations of any kind now or hereafter owing from the Company under or in connection with the Loan Agreement, including without limitation, the indebtedness evidenced by (i) a Seasonal Line Note by the Company to the order of the Bank in the original principal amount of \$5,000,000, (ii) a Term Loan Note by the Company to the order of the Bank in the original principal amount of \$6,000,000, and (iii) a Property Note by the Company to the order of the Bank in the original principal amount of \$4,800,000. Without limiting any other provisions of this Memorandum:

(i) The definition of "Note" as set forth in the Mortgage and the Assignment of Leases is deleted and the following inserted in its stead in each such document:

"The term 'Note' shall refer collectively to each promissory note, and all amendments, modifications, replacements, renewals and extensions thereof, now or hereafter made by Mortgagor to the order of Mortgagee, including, without limitation, a Seasonal Line Note in the original principal amount of \$5,000,000, a Term Loan Note in the original principal amount of \$6,000,000, and a Property Note in the original principal amount of \$4,800,000."

(ii) The definition of Maturity Date as set forth in the Mortgage shall refer to the respective maturity dates of each Note.

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(iii) The definition of "Indebtedness" as set forth in the Mortgage is deleted and the following inserted in its stead:

"The term 'Indebtedness' shall mean the principal amount and interest payable thereon, and all the fees, amounts, payments, liabilities and monetary liabilities and obligations due or required to be paid by Mortgagor under or in connection with the Credit Agreement, any promissory notes issued under or in connection with the Credit Agreement (including without limitation, a Seasonal Line Note in the original principal amount of \$5,000,000, a Term Loan Note in the original principal amount of \$6,000,000 and a Property Note in the original principal amount of \$4,800,000), this Mortgage or the other Loan Documents (as hereinafter defined), and all amendments, modifications, restatements, replacements, consolidations, substitutions, renewals, extensions, and increases thereto, whether heretofore or hereafter existing, and whether direct or indirect, absolute or contingent."

(iv) Section 3.1 of the Mortgage is deleted and the following inserted in its stead:

"To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Mortgagor by these presents hereby GRANTS, BARGAINS, SELLS, ASSIGNS, MORTGAGES and CONVEYS unto Mortgagee the Mortgaged Property, subject to the Permitted Exceptions, to have and to hold the Mortgaged Property unto Mortgagee, its successors and assigns forever, free and clear from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived) and Mortgagor does hereby warrant that Mortgagor is well and lawfully seized of good, absolute and indefeasible fee simple absolute title to the Mortgaged Property, free and clear of all mortgages, liens, charges, security interests and encumbrances whatsoever, except the Permitted Exceptions, and does hereby bind itself, its successors and assigns to warrant and forever defend fee simple absolute title to the Mortgaged Property unto Mortgagee, and the quiet and peaceful enjoyment and possession thereof, against every person whomsoever claiming the same or any part thereof or interest therein."

(v) The clause "as such Indebtedness and Obligations relate to the Property Loan" is hereby deleted from the first sentence of Section 4.1 of the Mortgage.

(vi) The clause "as they relate to the Property Loan" is hereby deleted from Section 5.1 of the Mortgage.

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(vii) The clause "relating to the Property Loan" is hereby deleted from Section 11.1 of the Mortgage.

(viii) Notwithstanding anything to the contrary in the Assignment of Leases, the term "Indebtedness Hereby Secured" shall include all indebtedness of any kind of Assignor (as therein defined) to Assignee (as therein defined), whether now existing or hereafter arising, including without limitation, all indebtedness evidenced by a Seasonal Line Note in the original principal amount of \$5,000,000, a Term Loan Note in the original principal amount of \$6,000,000, and a Property Note in the original principal amount of \$4,800,000."

(ix) The address of the Bank as set forth in the Mortgage and Assignment of Leases shall be 120 South LaSalle Street, Chicago, Illinois 60603.

(x) Notwithstanding anything to the contrary in the Mortgage or the Assignment of Leases, the term "Loan Documents" as used in such documents shall include this Memorandum, the Amendment and each Related Document.

3. Summary; Conflict. This Memorandum is not necessarily a complete summary of the Amendment or of all of the revisions to the Mortgage. The provisions of this Memorandum shall not be used in interpreting the Amendment. In the event of a conflict between this Memorandum and the Amendment, the terms of the Amendment shall control.

4. Counterparts. This Memorandum may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.


[Signature Page Follows]

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IN WITNESS WHEREOF, the parties hereto have executed this Memorandum on the date first set forth above.

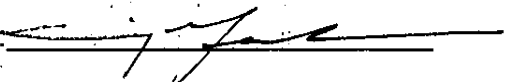
H2O PLUS, L.P.

By: H2O Plus, Inc.,  
its sole general partner

By: 

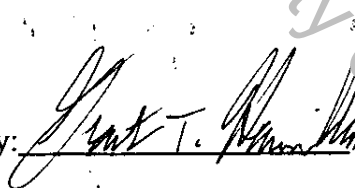
Its: CEO/CFO

Attest:

By: 

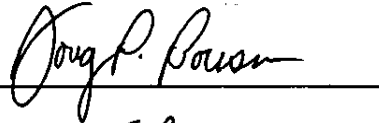
Its: CEO

AMERICAN NATIONAL BANK AND  
TRUST COMPANY OF CHICAGO

By: 

Its: Officer

Attest:

By: 

Its: FVP

## AFFIRMATION OF SUBORDINATION AGREEMENT

The undersigned, as maker of that certain Subordination Agreement dated as of August 14, 1998, as recorded as Document No. 08140614 with the Recorder of Deeds of Cook County, Illinois, hereby acknowledges and agrees to the foregoing Memorandum of Modification of Mortgage and agrees that the provisions of the Subordination Agreement shall remain in full force and effect with respect to the Mortgage, the Assignment of Leases and the other Related Documents as modified by this Memorandum of Modification of Mortgage and the accompanying Thirtieth Amendment to Restated Credit Agreement.



John Melk

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STATE OF ILLINOIS )  
COUNTY OF COOK ) SS

I, SANDRA QUAID, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY that LINDY MEZK, the CEO of H2O Plus, Inc., a Delaware corporation ("Corporation"), which Corporation is the sole general partner of H2O Plus, L.P., a Delaware limited partnership, and SCOTT DATS, the CEO/CEO of said Corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers appeared before me in person and acknowledged that they signed and delivered the said instrument, pursuant to the authority given by said Corporation as such officers' free and voluntary act and as a free and voluntary act and deed of the Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 2<sup>ND</sup> day of JANUARY, 2002.

Sandra Quaid  
Notary Public

My Commission Expires:

01-04-05



STATE OF ILLINOIS )  
COUNTY OF \_\_\_\_\_ ) SS

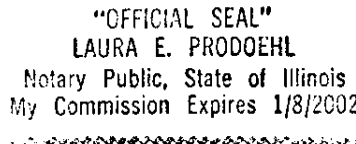
I, Laura E. Prodoehl, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY that GRANT HAMILTON, the officer of American National Bank and Trust Company of Chicago, a national banking association, ("Bank"), and \_\_\_\_\_, the \_\_\_\_\_ of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers appeared before me in person and acknowledged that they signed and delivered the said instrument, pursuant to the authority given by said Bank as such officers' free and voluntary act and as a free and voluntary act and deed of the Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 7<sup>th</sup> day of January, 2001.

Laura E. Prodoehl  
Notary Public

My Commission Expires:

1/8/2002




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STATE OF ILLINOIS )  
                                  )       SS  
COUNTY OF COOK )

I, SANDRA QUAID, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY that John Melk, an individual, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me in person and acknowledged that he signed and delivered the said instrument, as such person's free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 2<sup>nd</sup> day of JANUARY, 2001.

  
Notary Public

My Commission Expires:

1-4-05



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## EXHIBIT A

LOTS 3 TO 16, ALL INCLUSIVE, IN BLOCK 2 IN DUNCAN'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Property of Cook County Clerk's Office