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Doc#: 0336539066
Eugene "Gene" Moore Fee: \$42.50
Cook County Recorder of Deeds
Date: 12/31/2003 01:26 PM Pg: 1 of 10

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Deutsch, Levy & Engel, Chartered
225 W. Washington Street, Suite 1700
Chicago, Illinois 60606
Attn: Aaron B. Zarkovskiy, Esq.

This space reserved for Recorder's use only.

FIRST MODIFICATION OF LOAN DOCUMENTS

THIS FIRST MODIFICATION OF LOAN DOCUMENTS (this "Modification") is made as of the 17th day of October, 2003, by and among BUILDERS DESIGN GROUP, LLC, an Illinois Limited Liability Company ("Borrower"), Patrick Kainz and Christopher Feurer (together, "Guarantor") and LIBERTYVILLE BANK & TRUST COMPANY, an Illinois State Chartered Bank, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Six Million Dollars (\$6,000,000) pursuant to the terms and conditions of a Construction Loan Agreement dated as of April 17, 2002 between Borrower and Lender, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated April 17, 2002, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated April 17, 2002 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on May 20, 2002, as Document No. 0020572041 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and Leases dated April 17, 2002, from Borrower to Lender and recorded in the Recorder's Office on May 20, 2002, as Document No. 0020572042 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated April 17, 2002 from Borrower and Guarantor to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

- 168954.2

Near North National Title Corp
222 North LaSalle Street
Chicago, Illinois 60601

01020883/smw

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C. The Loan is further secured by a Guaranty of Payment and Completion dated April 17, 2002 from Guarantor to Lender (the "Guaranty").

D. Borrower desires to amend the Loan Documents in order to extend the Maturity Date and to increase the amount of the Loan on the terms and conditions contained herein.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Modification as representations and warranties of the Borrower and Guarantors), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) 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 Note is extended to July 17, 2004. Any reference in the Note, the Loan Agreement or any other Loan Document to the Maturity Date shall mean July 17, 2004.

2. **Loan Amount.** The amount of the Loan is hereby increased to Six Million Nine Hundred Thousand and no/100 dollars (\$6,900,000). Any reference in the Note, the Loan Agreement or any other Loan Document to the amount of the Loan shall mean Six Million Nine Hundred Thousand and no/100 dollars (\$6,900,000).

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

(a) The representations and warranties in 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 Mortgage) under the Note, the Mortgage or the other Loan Documents and neither Borrower nor Guarantor knows 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 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 Borrower 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, 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, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Modification and to perform the Loan Documents as modified herein. The execution and delivery of this Modification and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Modification has been duly executed and delivered on behalf of Borrower.

4. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Near North National Title Corporation to issue an endorsement to Lender's title insurance policy No. N01020883 (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 ("Date Down Endorsement").

5. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Modification. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

6. **Conditions Precedent.** The agreement of Lender to amend the Note and Loan Documents is subject to Lender's receipt of the following:

- (a) This Modification duly executed by all parties identified therein.
- (b) Officer's Certificate for Borrower containing the following: (i) resolutions approving the execution of this Modification in form and content acceptable to Lender; (ii) certified organizational documents of Borrower (or statement of no change if no change since last delivery of such documents to Lender); (iii) incumbency certificate.
- (c) Certificate of Good Standing for Borrower.
- (d) Date Down Endorsement

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(e) Payment by Borrower of all out-of-pocket costs and expenses incurred by Lender in connection with this Modification, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

(f) such other documents as may be reasonably requested by Lender or its counsel.

7. **Renewal Fee.** In consideration of Lender's agreement to make the modifications contained herein, Borrower shall pay to Lender a non-refundable fee in the amount of Seventeen Thousand Two Hundred Fifty Dollars (\$17,250), which shall be due and payable in full as a condition precedent to Lender's obligations hereunder.

8. **Miscellaneous.**

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

(b) This Modification shall not be construed more strictly against Lender than against Borrower or Guarantor or 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 Modification, and Borrower, Guarantor and Lender each acknowledges and waives 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 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 Modification, 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 Modification. Except as expressly

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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 obligations under this Modification.

(Signature Page Follows)

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

LENDER:

Libertyville Bank & Trust Company
an Illinois State Chartered Bank

By: _____

Name: Ronald Schroeder
Title: Senior Vice President

BORROWER:

Builders Design Group, LLC,
an Illinois Limited Liability Company

By: _____

Name: Patrick J. Kainz
Title: Manager

By: _____

Name: Christopher Feurer
Title: Manager

GUARANTOR:

Patrick J. Kainz

Christopher Feurer

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Title: Manager

By: _____
Name: Christopher Feurer
Title: Manager

GUARANTOR:

Patrick J. Kainz

Christopher Feurer

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STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)
 McHenry)

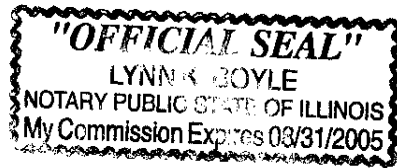
I Lynn K. Boyle, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Ronald Schroeder, Senior Vice President of Libertyville Bank & Trust Company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 4th day of December, 2003.

Lynn K. Boyle
Notary Public

My Commission Expires: 8-31-2005

STATE OF ILLINOIS)
)
COUNTY OF McHenry) SS

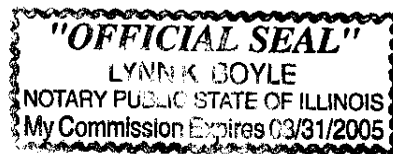


I Lynn K. Boyle, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Patrick J. Kainz and Christopher Feurer, Managers of Builders Design Group, LLC, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 4th day of December, 2003.

Lynn K. Boyle
Notary Public

My Commission Expires: 8-31-2005



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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I Anne Wubbolding, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Christopher Feurer 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 he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24 day of November, 2003.

Anne Wubbolding
Notary Public

My Commission Expires: 9/24/07



STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Patrick J. Kainz 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 he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2003.

Notary Public

My Commission Expires: _____

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EXHIBIT A

THE PROPERTY

The North 3/4 of the South 73.91 feet of the East half of that part lying between the East line of Dearborn Avenue and the West ^{line} ~~line~~ of State Street of Lot 7 of Bronson's Addition to Chicago (except from the above described premises the West 10 feet thereof dedicated for alley) in Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Commonly known as: 1330-34 N. State Parkway, Chicago, Illinois
PIN: 17-04-212-030-0000

Property of Cook County Clerk's Office