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Doc#: 040518104
Eugene "Gene" Moore Fee: \$44.00
Cook County Recorder of Deeds
Date: 02/20/2004 02:39 PM Pg: 1 of 11



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Eugene "Gene" Moore Fee: \$44.00
Cook County Recorder of Deeds
Date: 08/07/2003 08:23 AM Pg: 1 of 11

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DEC 19 1901
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SECOND MODIFICATION OF LOAN DOCUMENTS

* 20th day of August, 2003

THIS SECOND MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the ~~25th~~ day of July, 2003, by and among DELAWARE II, L.L.C., an Illinois limited liability company ("Borrower"), DONAL P. BARRY, SR., DONAL P. BARRY, JR., SEAN T. BARRY, MARGARET H. BARRY and JAMES W. PURCELL (collectively, "Guarantor") and LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Twelve Million Eight Hundred Thousand and 00/100 Dollars (\$12,800,000.00) pursuant to the terms and conditions of a Holdback Agreement dated as of January 23, 2003 between Borrower and Lender (the "Holdback Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Holdback Agreement), and as evidenced by a Promissory Note dated January 23, 2003, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

This document prepared by and after recording return to:

Michael S. Kurtzon, Esq.
Schwartz, Cooper, Greenberger & Krauss, Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

Permanent Index Number:

17-03-216-005

Address of Property:

25 E. Delaware
Chicago, Illinois

This document is being re-recorded to correct scrivener's error on the date of the document to reflect August 20, 2003

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B. The Loan is secured by a Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated January 23, 2003 from Borrower to Lender ("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 January 23, 2003, from Borrower to Lender (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated January 23, 2003 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").

C. The Loan is further secured by a Guaranty of Payment dated January 23, 2003 from Guarantor to Lender (the "Guaranty").

D. The Loan Documents were amended by a Modification of Loan Documents dated March 31, 2003 and recorded with the Cook County Recorder of Deeds on April 9, 2003 as Document No. 0030477755.

E. Borrower desires to further amend the Loan Documents as provided below.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (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. **Loan Amount.** The amount of the Loan is hereby increased by \$3,700,000.00 to an aggregate amount of \$16,500,000.00. All references in the Note, Mortgage and Loan Documents to the stated principal amount of the Loan shall mean \$16,500,000.00 in lieu of \$12,800,000.00. The additional \$3,700,000.00 proceeds of the Loan shall be disbursed in accordance with the requirements of the Holdback Agreement.

2. **Additional Equity.** Prior to, and as a condition to disbursement of any portion of the \$3,700,000.00 additional proceeds of the Loan, Borrower shall pay from its own funds an additional \$1,306,250.00 for project costs approved by Lender pursuant to a "Sub-Budget" (as defined in the Holdback Agreement) satisfactory to Lender and shall furnish evidence satisfactory to Lender of the payment of such costs.

3. **Guaranty.** Section 18 of the Guaranty of Payment is hereby amended by increasing the Payment Obligations of the Guarantor from \$6,400,000.00 to \$8,250,000.00.

4. **Interest Reserve.** The amount of the Interest Reserve in Section 3 of the Holdback Agreement is hereby increased from \$400,000.00 to \$500,000.00

5. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

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(a) The representations and warranties in the Holdback 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 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 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 Agreement, 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 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 Agreement and to perform the Loan Documents as modified herein. 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. This Agreement has been duly executed and delivered on behalf of Borrower.

6. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause First American Title Insurance Company to issue an endorsement to Lender's Title Insurance Policy No. LP4567248 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement, increasing the amount of title insurance to \$16,500,000.00 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.

7. **Reaffirmation of Guaranty.** Each Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. 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.

8. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with

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this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses, including a modification fee in the amount of \$18,500.00.

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 acknowledges and waives 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 Loan Documents are and remain unmodified and in full force and effect.

(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 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

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is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

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

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

LENDER:

LASALLE BANK NATIONAL ASSOCIATION

By: *Mike Hest*
Name: Mike Hest
Title: Assistant Vice President

BORROWER:

DELAWARE II, L.L.C., an Illinois limited liability company

By: **DELAWARE II MANAGEMENT SPE, INC.**, an Illinois corporation, its managing member

By: *Donal P. Barry, Sr.*
Donal P. Barry, Sr., President

GUARANTOR:

Donal P. Barry, Sr.
DONAL P. BARRY, SR.

Donal P. Barry, Jr.
DONAL P. BARRY, JR.

Sean T. Barry
SEAN T. BARRY

Margaret H. Barry
MARGARET H. BARRY

James W. Purcell
JAMES W. PURCELL

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STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I Monica L. Harder, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Mike Hurst, a ANP of LaSalle Bank National Association, a national banking association, 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 1 day of Aug., 2003.

Monica L. Harder
NOTARY PUBLIC

My Commission Expires: 7/29/05



STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, Jason Gnagy, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Donal P. Barry, Sr., the President of Delaware II Management SPE, Inc., an Illinois corporation, which is the Managing Member of DELAWARE II, L.L.C., an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of both said companies, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 25ⁿ day of July, 2003.

Jason Gnagy
NOTARY PUBLIC

My Commission Expires: 8/31/04




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STATE OF ILLINOIS)
) .ss
COUNTY OF Cook)

I Jason Gnagy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donal P. Barry, Sr. 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 25th day of July, 2003.


NOTARY PUBLIC

My Commission Expires: 8/31/04



STATE OF ILLINOIS)
) .ss
COUNTY OF Cook)

I Jason Gnagy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donal P. Barry, Jr. 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 25th day of July, 2003.


NOTARY PUBLIC

My Commission Expires: 8/31/04



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STATE OF ILLINOIS)
) .ss
COUNTY OF Cook)

I Jason Gnagy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Sean T. Barry 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 25th day of July, 2003.



NOTARY PUBLIC

My Commission Expires: 8/31/04



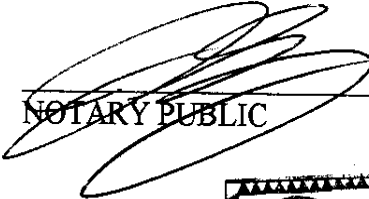
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STATE OF ILLINOIS)
) .ss
COUNTY OF Cook)

I Jason Gnagy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Margaret H. Barry 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 25th day of July, 2003.


NOTARY PUBLIC

My Commission Expires: 8/31/04



STATE OF ILLINOIS)
) .ss
COUNTY OF Cook)

I Jason Gnagy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that James W. Porcell 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 25th day of July, 2003.


NOTARY PUBLIC

My Commission Expires: 8/31/04



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EXHIBIT A

THE PROPERTY

THAT PART OF BLOCK 15 IN CANAL TRUSTEE'S SUBDIVISION OF THE SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID BLOCK RUNNING WEST 169 FEET 6-1/2 INCHES TO LAND NOW OR FORMERLY OF MATHIAS ROOS; RUNNING THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID BLOCK ABOUT 50 FEET TO A POINT FROM WHICH A STRAIGHT LINE RUNNING SOUTH 88 DEGREES 45 MINUTES EAST TO THE EAST LINE OF SAID BLOCK WOULD INTERSECT SAID EAST LINE AT A POINT 52.53 FEET SOUTH OF THE NORTH EAST CORNER OF SAID BLOCK; RUNNING THENCE EASTERLY ON SAID STRAIGHT LINE TO THE EAST LINE OF SAID BLOCK; RUNNING THENCE NORTH ON THE EAST LINE OF SAID BLOCK 52.53 FEET TO THE PLACE OF BEGINNING, (EXCEPT THE WEST 30 FEET THEREOF) IN COOK COUNTY, ILLINOIS.

Address: 25 East Delaware, Chicago, Illinois

PIN: 17-03-216-005

Office of Cook County Clerk's Office