



Doc#: 0421931000
Eugene "Gene" Moore Fee: \$50.50
Cook County Recorder of Deeds
Date: 08/06/2004 09:36 AM Pg: 1 of 14

**THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:**

GENEVA LEASING ASSOCIATES, INC.
1525 KAUTS ROAD
SUITE 100
WEST CHICAGO, ILLINOIS 60185
ATTN: JOHN F. SLADE

This space reserved for Recorder's use only



MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made effective as of the 11th day of June, 2004, by and among LION'S GATE, LLC, an Illinois limited liability company ("Borrower"), IRWIN M. BERKLEY ("Berkley" or "Individual Guarantor"), CENTURY DEVELOPMENT GROUP, L.P., an Illinois limited partnership ("Century" or "Partnership Guarantor", Individual Guarantor and Partnership Guarantor are sometimes herein referred to individually as a "Guarantor" and collectively as the "Guarantors"), and GENEVA LEASING ASSOCIATES, INC., an Illinois corporation, its participants, successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Six Million Seven Hundred Sixteen Thousand and No/100 Dollars (\$6,716,000.00) pursuant to the terms and conditions of a Financing Agreement dated June 11, 2002, between Borrower and Lender (the "Loan Agreement"), and as evidenced by a Promissory Note dated June 11, 2002, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. As of the Effective Date of this Modification, Lender has disbursed \$6,446,648.72 of the proceeds of the Loan, leaving \$269,351.28 remaining to be disbursed.

C. The Note is secured by, among other things, (i) that certain Mortgage, Assignment of Rents Security Agreement and Financing Statement dated June 11, 2002, from Borrower to Lender recorded with the Recorder of Deeds in Marion County, Indiana (the "Recorder's Office") on June 17, 2002, as Document No. 2002-0113122 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Environmental Indemnity Agreement dated June 11, 2002, from Borrower and Guarantors to Lender (the "Indemnity Agreement"); and (iii) certain other loan documents (the Note, the Mortgage, 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").

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J.C.S.

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D. The Loan is further secured by a Guaranty June 11, 2002, from Individual Guarantor to Lender and a Guaranty dated June 11, 2002, from Partnership Guarantor to Lender (collectively, the "Guaranty").

E. Borrower desires to amend the Loan Documents in order to extend the Maturity Date for eleven (11) months from June 11, 2004 to May 11, 2005, and to increase the amount of the Loan by \$543,437.00 from \$6,716,000.00 to \$7,259,437.00.

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. **Maturity Date.** The Maturity Date of the Note is hereby extended to May 11, 2005. Any reference in the Note, the Loan Agreement, the Mortgage or any other Loan Document to the Maturity Date shall mean May 11, 2005, and any reference to the Term of the Loan is hereby amended to mean thirty-five (35) months, beginning on June 11, 2002, and ending on May 11, 2005.

2. **Increase in Loan Amount.** The amount of the Loan is hereby increased by Five Hundred Forty Three Thousand Four Hundred Thirty Seven and No/100 Dollars (\$543,437.00), from \$6,716,000.00, to \$7,259,437.00. Any reference in the Note, the Loan Agreement, the Mortgage or any other Loan Documents to the Loan amount shall mean \$7,259,437.00. Proceeds of the \$543,437.00 increase in the Loan amount shall be allocated and utilized by Borrower in the amount of \$812,788.28, for the items set forth on the spreadsheet attached hereto as Exhibit B, and disbursed by Borrower for such items, subject to in accordance with the terms and conditions set forth in the Loan Documents. Any reference to the Project Budget in the Loan Documents shall mean the Project Budget, as supplemented and amended by the spreadsheet attached hereto as Exhibit B.

3. **Minimum Remittance.** The Loan Agreement currently provides for Borrower to remit to Lender, upon the sale of each Unit, one hundred percent (100%) of the net proceeds derived from such sale, but in no event less than ninety-four percent (94%) of the gross proceeds of such sale. Such minimum remittance amounts are set forth on the Minimum Remittance Certificate executed and delivered by Borrower to Lender upon closing of the Loan. The Loan Agreement and the Minimum Remittance Certificate are hereby modified and revised to provide that upon the closing of the sale of each Unit, Borrower shall remit to Lender ninety percent (90%) of the Base Purchase Price (as defined in Paragraph 3 of the Lion's Gate Dwelling Unit Sales Agreement, Exhibit "C" of such Unit. All references in the Loan Documents to the minimum remittance amount are hereby modified and revised to refer to such amount as modified hereby, as indicated in Exhibit "D" appended hereto and incorporated herein.

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4. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants 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 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, any 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 and Partnership Guarantor are each validly existing under the laws of the State of their respective formation or organization and each 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 and Guarantors. This Agreement has been duly executed and delivered on behalf of Borrower and Guarantors.

5. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Lawyers Title Insurance Corporation to issue an endorsement to Lender's title insurance policy No. M261085 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement, increasing the amount of the Title Insurance coverage to reflect the \$543,437.00, increase in the amount of the Loan 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.

6. **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 Guarantors in the Guaranty are, as of the date hereof, true and correct and Guarantors do not know of any default thereunder. The

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Guaranty continues to be the valid and binding obligation of each Guarantor, enforceable in accordance with its terms and Guarantors have no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

7. **Expenses/Extension Fee.** 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 this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses. Additionally, Borrower shall pay Lender an extension fee in the amount of \$21,875.00. Said fee shall be in addition to the fees set forth in Section 7 of the Loan Agreement.

8. **Miscellaneous.**

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

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or any Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantors and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantors 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 Guarantors nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantors 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, Guarantors 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.

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(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 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.

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


LENDER:

BORROWER:

GENEVA LEASING ASSOCIATES, INC.

LION'S GATE LLC,
an Illinois limited liability company

By:

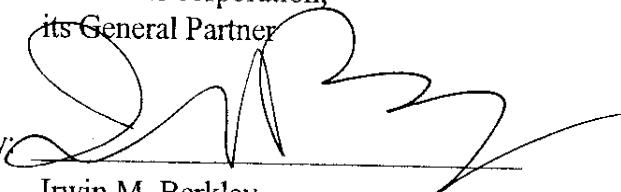


John F. Slade, Senior Vice President

By: CENTURY DEVELOPMENT GROUP, L.P.,
an Illinois limited partnership, its
managing member

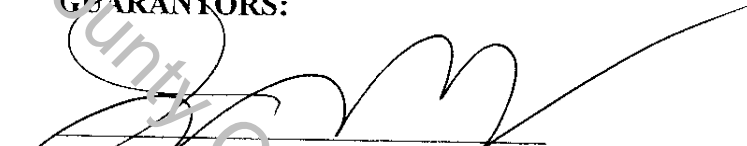
By: CDG, INC.,
an Illinois corporation,
its General Partner

By:



Irwin M. Berkley
Its: President

GUARANTORS:

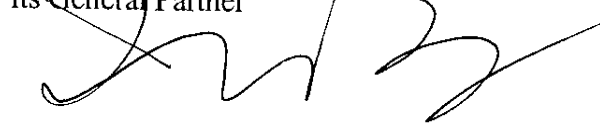


Irwin M. Berkley, Individually

CENTURY DEVELOPMENT GROUP, L.P.,
an Illinois limited partnership, its
managing member

By: CDG, INC.,
an Illinois corporation,
its General Partner

By:



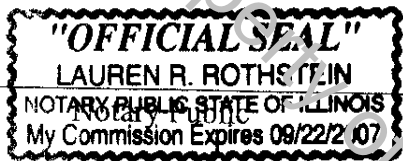
Irwin M. Berkley
Its: President

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STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, the undersigned, a notary public do hereby certify that Erwin Berkley personally known to me as the President of CDG, Inc., general partner of Century Development Group, L.P., Managing Member of **Lion's Gate, LLC**, an Illinois limited liability company, appeared before me this day in person, and for and on behalf of **Lion's Gate, LLC**, acknowledged that he signed and delivered the foregoing instrument as his free and voluntary act, and the free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this 30 day of June, 2004.



My commission expires: 9-22-07

Lauren Rothstein
(Printed Name)

County of Residence: Cook

(SEAL)

Cook County Clerk's Office

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STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

I, the undersigned, a notary public do hereby certify that **IRWIN M. BERKLEY**, personally known to me appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as his free and voluntary act, and the free and voluntary act for the uses and purposes therein set forth.

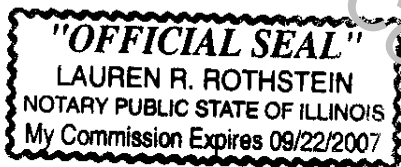
Given under my hand and official seal, this 3 day of July, 2004.

Lauren Rothstein
Notary Public

My commission expires: 9-22-07

Lauren Rothstein
(Printed Name)

County of Residence: Cook



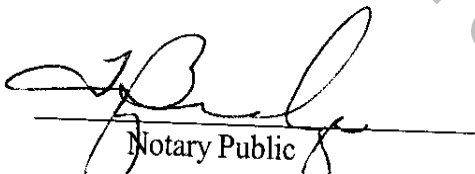
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STATE OF ILLINOIS)
) ss:
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John F. Slade is personally known to me as the Executive vice President of GENEVA LEASING ASSOCIATES, INC., an Illinois corporation, appeared before me this day in person, and for and on behalf of said corporation, acknowledged that he signed and delivered the foregoing instrument as his free and voluntary act, and the free and voluntary; act for the uses and purposes therein set forth.

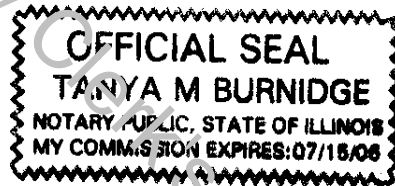
GIVEN under my hand and notarial seal, this 20th day of July, 2004.



Notary Public
Tanya M Burnidge
(Printed Name)

My commission expires: 7-15-06

County of Residence: Kane



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EXHIBIT B

Amendment to Project Budget

This block contains two large, stylized handwritten scribbles. One is on the left side of the page, and another is on the right side. A large, light gray watermark is overlaid diagonally across the center of the page, reading "Property of Cook County Clerk's Office".

This block contains a single large, stylized handwritten scribble located in the lower-left quadrant of the page.

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rights, powers, duties, and liabilities with respect to the Lion's Gate Association, Inc. (the "Association"), all as more particularly described in the Declaration;

Subject to the terms, provisions, covenants, restrictions, and conditions set forth in the Declaration, including, without limitation, the obligation of Unit Owners to pay assessments to the Association.

upon the following terms and conditions:

1. PURCHASE PRICE. The Base Purchase Price, as defined herein, of the Real Property is \$_____. The Purchase Price for a customized Unit (together with the Base Purchase Price, the "Purchase Price"), shall be determined in accordance with Paragraph 3 hereof. Charges for any additional options, upgrades or extras shall be set forth on written change orders executed by the parties subsequent hereto.

2. PAYMENT OF THE TOTAL PURCHASE PRICE. The Purchase Price shall be paid in U.S. Funds as follows: (a) \$_____ as "Earnest Money" shall be paid herewith and held by Seller or its agent, Century Development Group, L.P. ("Century"), in an interest-bearing account to be disbursed by Century in accordance with the terms and conditions hereof. At Seller's option, such Earnest Money may be deposited with Mid America Title Company (the "Title Company"), Busey Bank, or any other insured financial institution. The holder of the Earnest Money is referred to herein as the "Escrow Agent."

(b) \$_____, as "Additional Earnest Money," shall be paid to the Seller on the thirtieth (30th) day following the effective date hereof (unless the Closing shall have occurred), to be held and disbursed in accordance with the terms and conditions hereof; and

(c) The balance of the Purchase Price shall be paid in immediately available funds at Closing.

3. CONSTRUCTION. (a) The parties recognize that Lion's Gate was originally constructed as an apartment complex in approximately 1987-1988; Seller has agreed either to deliver the Unit: (i) with Standard Inclusions as outlined in Exhibit B, in which case the Purchase Price shall be the Base Purchase Price reflected in Section 1 hereof (the "Base Purchase Price"); or (ii) with upgrades selected by Buyer as reflected on Exhibit D, in which case the Purchase Price shall be as reflected in the specifications outlined in Exhibit D; or in an AS IS condition, in which case the Purchase Price shall be the Base Purchase Price reflected in Section 1 hereof (the "Base Purchase Price"). Buyer's choice for delivery of the Unit (with Standard Inclusions, or with upgrades, or in an AS IS condition), as the case may be, is reflected in Exhibit C. In the event the modifications or customizations described in Exhibits B, C or D are not completed prior to the Closing, the Buyer agrees to permit Seller to complete such work in a reasonable and timely manner following the Closing and the Seller agrees to complete such work free of liens and in a good and workmanlike manner within a reasonable time.

(b) Seller may substitute materials and make changes to the standard selections, as Seller deems reasonably appropriate or as may be necessitated by material availability or construction requirements. With respect to the balconies installed by the Seller, the Seller will have the right and duty to modify the Declaration to include the installed balconies and the use thereof in the Declaration in accordance with the terms of the Declaration and any requirements of the City of Indianapolis.

(c) Buyer understands and agrees that certain items, such as tile, cabinets, wood, stain, grout, wall and ceiling textures, marble, mica and carpeting, are subject to size and color variations, grain and quality variations, and may vary in accordance with price, availability and changes by manufacturer from those shown in the models or in illustrations or included in Seller's plan and specifications or in the published list of standard items (if any). If circumstances arise, which, in Seller's opinion, warrant changes of suppliers, manufacturers, brand names items, Seller may substitute equipment, material, appliances, etc., with items which in Seller's sole opinion are of equal or better quality. Buyer recognizes that certain colors as shown in the

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EXHIBIT D

Building 1	Type	Base Purchase Price	Minimum Remittance Amount
11	Picasso	\$207,900.00	\$187,110.00
28	Picasso	\$207,900.00	\$187,110.00
27	Monet	\$224,900.00	\$202,410.00
25	Degas	\$219,900.00	\$197,910.00

Building 3	Type	Base Sales Price	Minimum Remittance Amount
13	Rembrandt	\$269,900.00	\$242,910.00
14	Degas	\$219,900.00	\$197,910.00

Building 4	Type	Base Sales Price	Minimum Remittance Amount
18	Picasso	\$207,900.00	\$187,110.00
14	Degas	\$219,900.00	\$197,910.00
15	Degas	\$219,900.00	\$197,910.00
24	Degas	\$219,900.00	\$197,910.00
25	Degas	\$219,900.00	\$197,910.00

Building 5	Type	Base Sales Price	Minimum Remittance Amount
12	Monet	\$224,900.00	\$202,410.00
14	Degas	\$219,900.00	\$197,910.00
25	Degas	\$219,900.00	\$197,910.00
16	Rembrandt	\$269,900.00	\$242,910.00

Contracts

Building/Unit	Type	Base Sales Price	Minimum Remittance Amount	Buyer
1--23	Rembrandt	\$269,900.00	\$242,910.00	Lange
1--16	Rembrandt	\$269,900.00	\$242,910.00	Tragesser
5--17	Monet	\$224,900.00	\$202,410.00	Beausang
1--33	Rembrandt	\$272,900.00	\$245,610.00	Abraham

Reservation

Building/Unit	Type	Base Sales Price	Minimum Remittance Amount	Buyer
5--12	Rembrandt	\$269,900.00	\$242,910.00	Lancaster

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EXHIBIT A

The Property

