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Doc#: 0436433215
Eugene "Gene" Moore Fee: \$40.00
Cook County Recorder of Deeds
Date: 12/29/2004 12:57 PM Pg: 1 of 9

Prepared by and
When recorded Mail To:

DUANE MORRIS LLP
227 West Monroe Street
Suite 3400
Chicago, Illinois 60606
Attention: Daniel Kohn, Esq.

FIRST AMENDMENT TO LOAN DOCUMENTS

THIS FIRST AMENDMENT TO LOAN DOCUMENTS (the "Amendment") dated as of December 20, 2004, by and between **1035 NORTH DEARBORN, LLC**, an Illinois limited liability company ("**Borrower**") and **FIRST AMERICAN BANK**, an Illinois banking corporation, its successors and its assigns ("**Lender**").

WITNESSETH:

WHEREAS, Borrower has executed and delivered to Lender (i) a Term Note dated May 24, 2004, payable to Lender in the maximum stated principal amount of Seven Hundred Thousand and No/100 Dollars (\$700,000.00) (and any and all extensions and renewals thereof and substitutions or replacements therefor, sometimes hereinafter collectively referred to herein as the "**Term Note**"), and (ii) a Revolving Note dated May 24, 2004, payable to Lender in the maximum stated principal amount of Eighteen Million and No/100 Dollars (\$18,000,000.00) (and any and all extensions and renewals thereof and substitutions or replacements therefor, sometimes hereinafter collectively referred to herein as the "**Revolving Note**"; the Term Note and the Revolving Note are sometimes hereinafter collectively referred to as the "**Notes**"), pursuant to which Borrower promises to pay each such principal sum thereof (or so much thereof as may be outstanding at the Maturity Date (as such term is defined in each such Note), or such earlier date as each such note may be accelerated in accordance with the terms of the Loan Agreement (as hereinafter defined)), together with interest on the balance of principal from time to time outstanding and unpaid thereon at the rate and at the times specified in such Notes.

Box 400-CTCC

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WHEREAS, the Notes have been issued under and subject to the provisions of that certain Construction Loan Agreement dated as of May 24, 2004, by and between Borrower and Lender (as the same has been or may be amended, restated, modified and/or supplemented from time to time, the "**Loan Agreement**").

WHEREAS, the loan described in the Loan Agreement and the Notes (the "**Loan**") and Borrower's obligations thereunder are secured by, among other things, (i) that certain Construction Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated May 24, 2004, from Borrower in favor of Lender, recorded with the Cook County Recorder of Deeds on June 2, 2004, as Document No. 0415435001, encumbering the real property described in **Exhibit A** attached hereto, (ii) that certain Environmental Indemnity Agreement dated May 24, 2004, from Borrower and James D. Letchinger, in favor of Lender, (iii) that certain Collateral Assignment of Sales Contracts dated May 24, 2004, from Borrower in favor of Lender, (iv) that certain Security Agreement and Assignment of Contractual Agreements Affecting Real Estate dated May 24, 2004, from Borrower in favor of Lender, and (v) that certain Assignment of Developer Agreement and Subordination of Developer Fees dated May 24, 2004, from Borrower and JDL Development Contractors, LLC, an Illinois limited liability company, in favor of Lender (collectively, as such documents may be modified, amended or replaced from time to time, the "**Loan Documents**").

WHEREAS, Borrower has requested that Lender, among other things, agree to increase the maximum principal amount of the Revolving Note to Twenty-One Million and No/100 Dollars (\$21,000,000.00).

WHEREAS, Lender has agreed to so modify the Revolving Note as aforesaid provided, among other things, that Borrower executes this Amendment whereby the Loan Documents are modified to reflect that the Loan has been increased in accordance with the terms of the modification described above.

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

1. The foregoing recitals are hereby incorporated by this reference into this Amendment.
2. Borrower and Lender agree that the maximum principal amount of the Loan has been increased to Twenty-One Million Seven Hundred Thousand and No/100 Dollars (\$21,700,000.00). To reflect such modification, any and all references in the Loan Documents to "Eighteen Million Seven Hundred Thousand and No/100 Dollars (\$18,700,000.00)" are hereby deleted and replaced with the amount "Twenty-One Million Seven Hundred Thousand and No/100 Dollars (\$21,700,000.00)".
3. Borrower and Lender agree that the maximum principal amount of the Revolving Note has been increased to Twenty-One Million and No/100 Dollars (\$21,000,000.00). To reflect such modification, any and all references to the maximum principal amount of the Revolving Note in the Loan Documents to "Eighteen Million and No/100 Dollars

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(\$18,000,000.00)" are hereby deleted and replaced with the amount "Twenty-One Million and No/100 Dollars (\$21,000,000.00)".

4. Borrower and Lender agree that the Maximum Disbursed Amount (as defined in the Loan Agreement) has been increased to Twenty-Nine Million Two Hundred Thirty-Seven Thousand Five Hundred and No/100 Dollars (\$29,237,500.00). To reflect such modification, any and all references to the Maximum Disbursed Amount of the Loan in the Loan Documents to "Twenty-Six Million Three Hundred Thirty-Three Thousand and No/100 Dollars (\$26,333,000.00)" are hereby deleted and replaced with the amount "Twenty-Nine Million Two Hundred Thirty-Seven Thousand Five Hundred and No/100 Dollars (\$29,237,500.00)".

5. Borrower and Lender agree that the Maximum Outstanding Amount (as defined in the Loan Agreement) has been increased to Twenty-One Million Seven Hundred Thousand and No/100 Dollars (\$21,700,000.00). To reflect such modification, any and all references to the Maximum Outstanding Amount of the Loan in the Loan Documents to "Eighteen Million Seven Hundred Thousand and No/100 Dollars (\$18,700,000.00)" are hereby deleted and replaced with the amount "Twenty-One Million Seven Hundred Thousand and No/100 Dollars (\$21,700,000.00)".

6. Borrower and Lender agree that the number of Units (as defined in the Loan Agreement) to be constructed in the Project (as defined in the Loan Agreement) has been increased to twenty-seven (27). To reflect such modification, any and all references to the maximum number of Units in the Loan Documents to "twenty-three (23)" are hereby deleted and replaced with the amount "twenty-seven (27)".

7. Borrower and Lender agree that the minimum number of pre-sold Units has been increased to Eleven (11). To reflect such modification, any and all references to the minimum number of pre-sold Units in the Loan Documents to "ten (10)" are hereby deleted and replaced with the amount "eleven (11)".

8. **Conditions Precedent.** Notwithstanding anything to the contrary contained herein, Lender's consent to the execution of this Agreement is conditioned upon Lender's verification of the satisfaction, in Lender's sole and absolute discretion, of the following conditions:

(a) Lender has received an original executed copy of the reaffirmation of guaranty of payment and performance from James D. Letchinger in form and substance acceptable to Lender;

(b) Lender has received evidence that the execution of this Agreement and all documents related thereto were properly authorized by Borrower;

(c) At Borrower's sole cost and expense, Lender has received a currently dated date-down endorsement to Chicago Title Insurance Company Title Policy No. 8187919 (the "**Title Policy**") which shows (i) an increased insurance amount to Twenty-One Million Seven Hundred Thousand and No/100 Dollars (\$21,700,000.00), and (ii) no additional liens impacting the real property described in such Title Policy;

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(d) Borrower has paid to Lender a loan modification fee in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) (the "**Modification Fee**"), which Modification Fee shall be deemed fully earned and non-refundable;

(e) Lender has received an opinion of counsel from Borrower's and Guarantor's counsel stating that the documents have been properly authorized and are in full force and effect;

(f) Lender has received such other documents as required by Lender; and

(g) Borrower has paid all of Lender's costs, fees and expenses incurred by Lender in connection with this Amendment, including, without limitation, all legal fees and expenses, title search fees and/or title insurance fees.

9. Nothing herein contained shall impair the Loan Documents in any way, nor alter, waive, annul, vary nor affect any provision, condition or covenant therein contained except as expressly herein provided nor affect or impair any right, power or remedy of Lender, it being the intention of the parties hereto that the terms and provisions of the Loan Documents shall continue in full force and effect except as expressly modified in connection herewith.

10. This Amendment shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

11. No extension, change, modification or amendment of any kind or nature whatsoever, to or of this Amendment shall be made or claimed by Borrower, and no notice of any extension, change, modification or amendment, made or claimed by Borrower shall have any force or effect whatsoever unless the same shall be reduced to writing and signed by the parties.

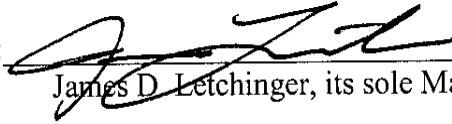
12. This Amendment may be executed in one or more counterpart signature pages, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the undersigned have caused these presents to be signed as of the day and year first above written.

BORROWER:

1035 NORTH DEARBORN, LLC,
an Illinois limited liability company

By: 
James D. Letchinger, its sole Manager

LENDER:

FIRST AMERICAN BANK,
an Illinois banking corporation

By: _____
Its: _____

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IN WITNESS WHEREOF, the undersigned have caused these presents to be signed as of the day and year first above written.

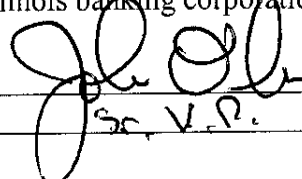
BORROWER:

1035 NORTH DEARBORN, LLC,
an Illinois limited liability company

By: _____
James D. Letchinger, its sole Manager

LENDER:

FIRST AMERICAN BANK,
an Illinois banking corporation

By:  _____
Its: Sec. V.P. _____

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STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, Robert D. Stone, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **James D. Letchinger**, personally known to me to be the sole manager of **1035 North Dearborn, LLC**, an Illinois limited liability company, is 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 the said instrument as his free and voluntary act as sole manager of such limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ^{20th} ~~7th~~ day of December, 2004.

Robert D. Stone
Notary Public

My commission expires: 7/14/07

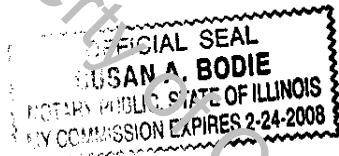


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STATE OF ILLINOIS)
) SS.
COUNTY OF DuPAGE)

I, SUSAN A. BODIE, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOHN OLSEN, personally known to me to be the SR. VICE PRESIDENT of **FIRST AMERICAN BANK**, an Illinois banking corporation, is 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 the said instrument as his/her free and voluntary act as SR. VICE PRESIDENT of such banking corporation as aforesaid, for the uses and purposes therein set forth.

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



Susan A. Bodie
Notary Public

My commission expires: 2-24-2008

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EXHIBIT A

Legal Description

LOTS 1, 2, 3, 4 AND 5 IN SUBDIVISION OF LOT 4 IN BLOCK 16 OF BUSHNELL'S ADDITION TO CHICAGO IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. Nos.: 17-04-424-001-0000;
17-04-424-002-0000;
17-04-424-003-0000;
17-04-424-004-0000; and
17-04-424-005-0000

Common Address: 1035 North Dearborn Street, Chicago, Illinois

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