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Doc#: 0505533103
Eugene "Gene" Moore Fee: \$50.00
Cook County Recorder of Deeds
Date: 02/24/2005 11:06 AM Pg: 1 of 14

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MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 4th day of January, 2005, by and among WILLE ROAD LLC, an Illinois limited liability company ("Borrower"), ML REALTY PARTNERS LLC, a Delaware limited liability company ("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 Nineteen Million Eight Hundred Fifty Thousand and No/100 Dollars (\$19,850,000.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of August 7, 2003 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 August 7, 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:**

Brook M. Bailey, Esq.
Schwartz, Cooper, Greenberger &
Krauss, Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

Permanent Index Numbers:

See Exhibit A attached hereto

Address of Property:

55-257 West Wille Road,
Des Plaines, Illinois

Box 400-CTCC

788 6990 BZK CO

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B. The Loan is secured by a Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated August 7, 2003 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on August 19, 2003, as Document No. 0323142291 ("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 August 7, 2003, from Borrower to Lender and recorded in the Recorder's Office on August 19, 2003, as Document No. 0323142292 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated August 7, 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 and 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 Completion and Non-Recourse Carve Outs dated August 7, 2003 from Guarantor to Lender (the "Guaranty").

D. The Loan is further secured by a Put Agreement dated August 7, 2003 by and between Borrower, Lender and Guarantor (the "Put Agreement").

E. As of the date hereof, the proceeds of the Loan have been fully disbursed and the outstanding principal amount of the Loan is \$16,192,414.05.

F. Borrower has requested that Lender increase the stated principal amount of the Note from \$19,850,000.00 to \$22,525,000.00 to be disbursed as herein provided.

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. **Principal.** The stated principal amount of the Note is hereby increased by \$2,675,000.00 (the "Additional Indebtedness") from \$19,850,000.00 to \$22,525,000.00. Any reference in the Note, the Loan Agreement, the Mortgage or any other Loan Document to the stated principal amount of the Note or the "Loan Amount" shall mean \$22,525,000.00. The Mortgage and the Assignment of Leases shall hereafter reflect and secure the principal amount of \$22,525,000.00.

2. **Disbursement of Additional Indebtedness.** Subject to the terms of this Agreement (i) the proceeds up to \$2,500,000.00 of the Additional Indebtedness shall be allocated to finance the cost of "Tenant Improvements" (as defined in the Loan Agreement) required to be performed by Borrower under the Leases, as defined and pursuant to the terms of the Loan Agreement, and (ii) the proceeds of up to \$275,000.00 of the Additional Indebtedness shall be

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allocated to finance additional environmental remediation costs of the Project and for miscellaneous other costs relating to the financing, development and operation of the Project, but not including any additional fees paid to Borrower or its affiliate.

3. **Loan Agreement.** The Project Budget attached to the Loan Agreement as **Exhibit C**, is hereby deleted in its entirety and replaced with the Project Budget approved by Borrower and Lender and attached hereto as **Exhibit B**.

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, 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.

5. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's Title Insurance Policy No. 1401 7886990-1 (the "**Title Policy**"), as of the date this Agreement is recorded, reflecting (i) the recording of this Agreement, (ii) the increase in the amount of insurance to \$22,525,000.00, and (iii) 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.

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6. Reaffirmation of Guaranty.

(a) Guarantor hereby agrees that the Guaranty is amended by revising all references to the "Payment Obligations" (as defined in Paragraph 1 of the Guaranty) to include the entire principal indebtedness evidenced by the Note, including the Additional Indebtedness.

(b) Guarantor ratifies and affirms the Guaranty as modified hereby, and agrees that the terms of the Guaranty are 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 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.

7. Reaffirmation of Put Agreement.

(a) Guarantor hereby agrees that the Put Agreement is amended by revising all references to the "Loan" (as defined in the Recitals of the Put Agreement) to include the entire principal indebtedness evidenced by the Note, including the Additional Indebtedness.

(b) Guarantor ratifies and affirms the Put Agreement as modified hereby, and agrees that the terms of the Put Agreement are in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Put Agreement are, as of the date hereof, true and correct and does not know of any default thereunder. The Put Agreement 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 a loan fee to Lender in the amount of \$20,062.50, together with 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.

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

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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 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.

10. **Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act.** Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Lender to identify Borrower in accordance

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with the Act. In addition, Borrower shall (a) ensure that no person who owns a controlling interest in or otherwise controls Borrower or any subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

[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:

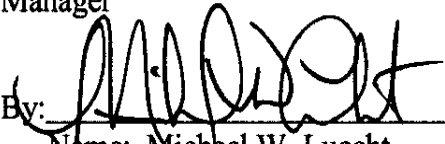
LASALLE BANK NATIONAL ASSOCIATION

By: 
Name: Victor E. Monks
Title: Vice Pres.

BORROWER:

WILLE ROAD LLC, an Illinois limited liability company

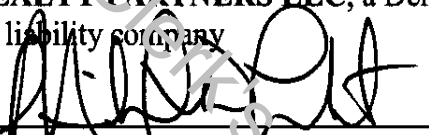
By: **ML REALTY PARTNERS LLC**, a Delaware limited liability company, its Manager

By: 
Name: Michael W. Luecht
Title: Chief Executive Officer

By: _____
David R. Kahnweiler, its Manager

GUARANTOR:

ML REALTY PARTNERS LLC, a Delaware limited liability company

By: 
Name: Michael W. Luecht
Title: Chief Executive Officer

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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: _____
Name: _____
Title: _____

BORROWER:

WILLE ROAD LLC, an Illinois limited liability company

By: **ML REALTY PARTNERS LLC, a Delaware limited liability company, its Manager**

By: _____
Name: **Michael W. Luecht**
Title: **Chief Executive Officer**

By:  _____
David R. Kahnweiler, its Manager

GUARANTOR:

ML REALTY PARTNERS LLC, a Delaware limited liability company

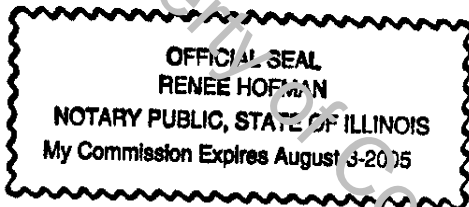
By: _____
Name: **Michael W. Luecht**
Title: **Chief Executive Officer**

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STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **Michael W. Luecht**, the **Chief Executive Officer** of **ML Realty Partners LLC**, a Delaware limited liability company, a **Manager** of **WILLE ROAD LLC**, 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 Chief Executive Officer, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, in its capacity as a manager of Wille Road LLC, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 4th day of January, 2005.



Renee Hoffman

NOTARY PUBLIC
(SEAL)

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **David R. Kahnweiler**, a **Manager** of **WILLE ROAD LLC**, 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 signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this ___ day of January, 2005.

NOTARY PUBLIC

(SEAL)

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STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **Michael W. Luecht**, the **Chief Executive Officer** of **ML Realty Partners LLC**, a Delaware limited liability company, a **Manager** of **WILLE ROAD LLC**, 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 Chief Executive Officer, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, in its capacity as a manager of Wille Road LLC, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this ____ day of January, 2005.

NOTARY PUBLIC

(SEAL)

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

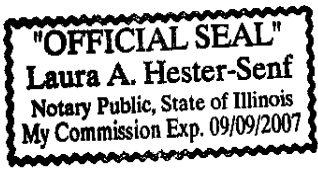
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **David R. Kahnweiler**, a **Manager** of **WILLE ROAD LLC**, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 9th day of January, 2005

Laura A. Hester-Senf

NOTARY PUBLIC

(SEAL)

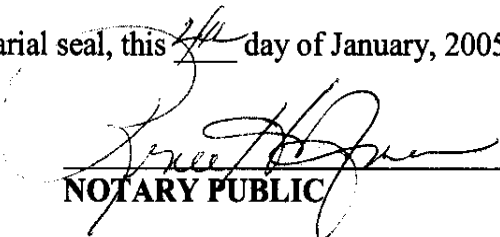


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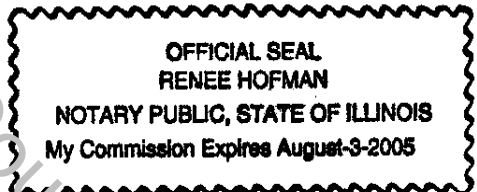
STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **Michael W. Luecht**, the **Chief Executive Officer** of **ML Realty Partners LLC**, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Chief Executive Officer, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, in its capacity as a manager of Wille Road LLC, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 24 day of January, 2005.



NOTARY PUBLIC
(SEAL)



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STATE OF Illinois)
)
COUNTY OF COOK)

Before me, MARIA T. ESPARZA, a Notary Public of the State and County aforesaid, personally appeared VICTOR MONROY, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Vice President of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, the within named grantor, and that VICTOR MONROY as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said bank by himself as Vice President for the Bank.

WITNESS my hand and seal, this 5th day of February, 2005.

Maria T. Esparza
Notary Public

My Commission Expires: 4/29/07



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EXHIBIT A

LEGAL DESCRIPTION

That part of the Northeast Quarter of Section 25, Township 41 North, Range 11, East of the Third Principal Meridian, lying northerly of the Illinois State Toll Highway Authority property, and described as follows:

Beginning at the Northeast corner of Lot 1 in Harry Wille's Subdivision of the West 400.0 feet of the East 832.0 feet of the North 200.0 feet of the Southeast Quarter of said Northeast Quarter, according to the plat thereof recorded July 21, 1958 as Torrens Document Number LR1807516; thence South 00 degrees 48 minutes 39 seconds East along the East line of said Lot 1, a distance of 167.00 feet to the Southeast corner of said Lot 1; thence South 89 degrees 06 minutes 16 seconds West, along the South line of said Lot 1, a distance of 400.00 feet to the Southwest corner of said Lot 1; thence South 00 degrees 48 minutes 39 seconds East along the West line of the East 832.00 feet of the aforesaid Southeast Quarter of the Northeast Quarter, 874.41 feet to the line being 82.50 feet northerly of and parallel with the northerly line of Parcel N-42.1 as described on a Warranty Deed recorded July 8, 1957 in Volume 1502, Page 405 as Document Number 1747087; thence North 70 degrees 36 minutes 56 seconds West along said parallel line, 781.12 feet to a line being 82.50 feet northerly of and parallel with the northerly line of Parcel N-42.2 also described on said Warranty Deed; thence South 69 degrees 57 minutes 18 seconds West along the last described parallel line, 450.34 feet to the East line of the West 680.02 feet of said Northeast Quarter; thence North 00 degrees 48 minutes 16 seconds West along the last described line, 951.30 feet to the North line of the Southwest Quarter of said Northeast Quarter; thence North 89 degrees 06 minutes 16 seconds East along the last described line, 1158.20 feet to the aforementioned West line of the East 832.00 feet of the Southeast Quarter of the Northeast Quarter; thence South 00 degrees 48 minutes 39 seconds East, along the last described line, 33.00 feet to the Northwest corner of said Lot 1; thence North 89 degrees 06 minutes 16 seconds East along the North line of said Lot 1, a distance of 400.00 feet to the point of beginning, in Cook County, Illinois.

ADDRESS: 55-257 West Wille Road, Des Plaines, Illinois

P.I.N.: 08-25-203-013-0000
08-25-203-014-0000
08-25-202-009-0000
08-25-203-008-0000
08-25-203-009-0000
08-25-203-012-0000

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Sources of Funds	Original Budget	Revised Budget	Total Paid to Date	Balance to Become Due	Uses of Funds	Original Budget	Revised Budget	Total Paid to Date	Balance to Become Due
LaSalle Bank Loan	\$ 19,850	\$ 22,525	\$ 13,881	\$ 8,644	Land Acquisition	\$ 8,067	\$ 8,067	\$ 8,067	\$ -
Equity	2,275	2,275	2,275	-	Hard Costs	10,039	10,039	5,986	4,052
					Tenant Improvements	720	3,120	-	3,120
					Hard Cost Contingency	141	141	-	141
					Environmental	41	316	41	275
					Leasing Commissions	1,168	1,168	883	285
					Development Fee	509	509	339	170
					Soft Cost Contintency	64	64	14	50
					Miscellaneous	380	380	339	41
					Loan Fee	174	174	174	-
					Interest Reserve	822	822	312	510
TOTAL SOURCES	\$ 22,125	\$ 24,800	\$ 16,156	\$ 8,644	TOTAL USES	\$ 22,125	\$ 24,800	\$ 16,156	\$ 8,644

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