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This instrument prepared by
(and return after recording to):

Keith L. Moore, Esq.
806 Greenwood Street
Evanston, IL 60201

Doc#: 0511922181
Eugene "Gene" Moore Fee: \$48.50
Cook County Recorder of Deeds
Date: 04/29/2005 02:08 PM Pg: 1 of 13

**SECOND LOAN
MODIFICATION AGREEMENT,
AMENDMENT TO NOTE,
MORTGAGE AND OTHER
LOAN DOCUMENTS
AND ACKNOWLEDGMENT
OF GUARANTORS**

Loan Number: 2591753

This **SECOND LOAN MODIFICATION AGREEMENT, AMENDMENT TO NOTE, MORTGAGE, AND OTHER LOAN DOCUMENTS** (this "Second Modification Agreement") is entered into as of the 14th day of March, 2005, by **L.P. DEVELOPMENT III, L.L.C.**, an Illinois limited liability company, ("Borrower") and **FREDERICK S. LATSKO** ("Guarantor"), with a mailing address of 1430 N. Dearborn St., Chicago, IL. 60610 and **FIRST BANK AND TRUST COMPANY OF ILLINOIS**, an Illinois banking corporation ("Lender"), with a mailing address of 300 East Northwest Highway, Palatine, Illinois 60067.

WITNESSETH:

WHEREAS, Borrower executed and delivered to Lender that certain Promissory Note dated December 30, 2002, in the original principal amount of Seven Million One Hundred Thousand and no/100 Dollars (\$7,100,000.00) (as amended from time to time, the "Note"); and

WHEREAS, the loan evidenced by the Note was made to Borrower pursuant to a certain Acquisition and Construction Loan Agreement dated December 30, 2002, as modified by a certain First Amendment to Loan Agreement dated January 15, 2003 (collectively, the "Loan Agreement");

WHEREAS, payment of the Note is secured by, among other things, the following instruments:

- (1) Construction Mortgage, Assignment Of Leases and Rents, Security Agreement and Fixture Filing by Borrower dated December 30, 2002, recorded February 14, 2003, in the real estate records of Cook County, Illinois, as Document Number 0030217006 (the "Mortgage");
- (2) Environmental Indemnity Agreement (the "Environmental Indemnity") from Borrower dated December 30, 2002;

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- (3) Guaranty of Payment, Performance and Completion dated December 30, 2002 (the "Guaranty"); and
- (4) Assignment of Contracts, Permits and Licenses dated December 30, 2002;

The Mortgage, the Note, the Loan Agreement, the Guaranty, the Environmental Indemnity, and this and all prior and future modification agreement(s), and any and all other agreements and documents related to the Loan shall hereinafter be collectively referred to as the "Loan Documents".

WHEREAS, the Loan Documents were further modified by that certain LOAN MODIFICATION AGREEMENT, AMENDMENT TO NOTE, MORTGAGE AND OTHER LOAN DOCUMENTS dated as of March 31, 2004, by and among the Lender and Borrower (the "First Modification"), whereby among other things, the Maturity Date of the Note was extended to December 31, 2004;

WHEREAS, Borrower now desires to further modify the Loan Documents to, among other things, (i) extend the Maturity Date as hereinafter provided.

WHEREAS, Lender is willing to do so upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, and also in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid to Lender by Borrower, the parties hereto agree as follows:

1. **Maturity Date.** The Note, the Loan Agreement, the Mortgage and the other Loan Documents are modified by deleting the date "**December 31, 2004**" and substituting in its place the date "**December 31, 2005**".

2. **Amendment of the First Modification.** Subparagraphs 2(a), 2(b) and 2(c) of the First Modification are deleted in their entirety and the following are substituted in their place:

(a) **Indebtedness Secured By Mortgage and Loan Documents.** The Mortgage and other Loan Documents are hereby modified and amended so that the definition of the "Note" or "Notes", and any reference to the "Note" or "Notes", set forth in the Mortgage and other Loan Documents shall also mean and include the following: (i) that certain Third Amended and Restated Promissory Note dated as of March 14, 2005, in the principal amount of One Million Eight Hundred Thousand Dollars (~~\$1,800,000.00~~) made by Frederick Latsko in favor of Lender (as heretofore and hereafter modified, the "**Working Capital Note**").

(b) **Cross-Collateralization.** Borrower hereby agrees that the indebtedness evidenced by the Note shall also be further secured by: (i) the Loan Documents that secure the Note (the "**Bosworth Collateral**"); (ii) omitted; (iii) a certain second mortgage, as modified, entered into by L.I. Development Kansas City, LLC, an Illinois limited liability company, securing the real estate and improvements located thereon located at 3601 Fairbanks Avenue and 701 East 38th Street, Kansas City, Kansas (the "**Kansas City Collateral**"); and (iv) a certain pledge agreement, as

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modified, entered into by Borrower, securing all of Borrower's right, title and interests as sole member of L.I. Development II, LLC, in and to said limited liability company, which company is the sublessor to BENE Midwest, Inc., d/b/a Benneton, of retail premises located at 833 West Armitage, in Chicago, Illinois (the "**Armitage Collateral**"). Lender is entitled to the benefits of the security provided for in the various mortgages and security instruments referred to above, to which reference is made for a description of the properties and rights included in such security, the nature of such security and the rights of Lender, as the holder of the Note. With regard to the Kansas City Collateral, the second mortgage, as modified, in favor of Lender, shall be recorded and shall be subordinate only to the first mortgage in favor of LaSalle Bank having a principal balance of no more than \$2,375,000.00. Borrower shall cause to be released or subordinated the mortgages and security instruments in favor of Bank of Lincolnwood that would prevent Lender from having a second mortgage position on the Kansas City Collateral. The foregoing second mortgage position shall be evidenced by a loan title insurance policy insuring Lender's second mortgage. The costs of recording Lender's second mortgage and obtaining the title insurance policy shall be paid by Borrower.

(c) **Cross-Default.** Any Event of Default under the various mortgages, security instruments or other loan documents that secure or are secured by the Working Capital Note, the Kansas City Collateral, or the Armitage Collateral shall constitute an Event of Default under the Note. And any Event of Default under the Note or under the Mortgage or other Loan Documents shall constitute an Event of Default under the mortgages, security instruments and other loan documents that secure or are secured by the Working Capital Note, the Kansas City Collateral, or the Armitage Collateral.

3. **Modification/Extension Fee.** Borrower acknowledges that, as partial consideration for Lender extending the maturity date of the Loan, Borrower shall pay a fee to Lender in the amount of **One-Half Percent (0.5%)** of the outstanding balance of the Loan (i.e., **Twenty Thousand Five Hundred Eighty Five Dollars (\$20,585.00)**) (the "Extension Fee"), which fee has been fully earned by Lender as of the date of this Modification Agreement but shall be payable by Borrower upon the earlier of (a) repayment of the Loan or (b) upon Loan maturity. Borrower acknowledges and agrees that pursuant to the Loan Agreement and First Modification, prior loan fees in the amounts of **Seventy One Thousand Dollars (\$71,000.00)** plus **Seventy One Thousand Dollars (\$71,000.00)**, respectively, have been earned by Lender and are due and payable to Lender on the earlier of (a) repayment or (b) maturity of the Loan. In the event that on or before April 30, 2005 the outstanding principal balance of the Loan is reduced by proceeds generated by the closing of the pending sale of a Unit in the Project, the Extension Fee shall be decreased by an amount equal to **One-Half Percent (0.5%)** of the amount of the principal reduction (e.g., if on or before April 30, 2005, the principal balance of the Note is reduced by **Eight Hundred Thousand Dollars (\$800,000.00)**, then the Extension Fee shall be reduced by **Four Thousand Dollars (\$4,000.00)**).

4. **Loan Balance.** Borrower hereby acknowledges that as of February 10, 2005, the current principal balance of the Loan is **\$4,116,684.98**, not including accrued interest and late charges.

5. **Covenants and Warranties of Borrower:** Borrower hereby represents to, covenants with Lender, and acknowledges that:

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- (a) At the date hereof, the Loan Documents as amended hereby are in full force and effect, and Borrower is not in default in the payment of any sums, charges or obligations under the Loan Documents or in the payment or performance of any covenants, agreements or conditions of Borrower contained in the Loan Documents;
- (b) At the date hereof, Borrower has no right or claim of set-off, discount, deduction, defense or counterclaim which could be asserted in any action brought to enforce the Loan Documents;
- (c) There are no actions, suits or proceedings (including, without limitation, proceedings before any court, arbitrator or governmental authority or agency) pending or threatened against Borrower (or to the knowledge of Borrower any basis for any such action, suit or proceeding), which if adversely determined, might individually, or in the aggregate, materially adversely:
- i) impair the ability of Borrower to pay or perform its obligations under the Loan Documents; or
 - ii) affect the assets pledged as collateral under the Loan Documents;
- (d) There is no presently known fact which affects, or may affect in the future (so far as the undersigned can foresee), materially and adversely the condition (financial or other) of Borrower to pay or perform its obligations under the Loan Documents;
- (e) There are no other liens, encumbrances or other mortgages on the Property and improvements thereon, except in favor of Lender;
- (f) Neither the Loan Documents nor any other document or written materials delivered or made, and any other communication made, to Lender or any employee or agent of Lender contains any untrue statement of a material fact or fails to state a material fact necessary in order to make any statement contained therein not misleading in light of the circumstances in which such statement was made.
- (g) Borrower acknowledges that Lender charges fees for services it provides in connection with administering its loans, including, without limitation, release fees, construction draw fees, inspection fees, and insurance verification fees. These may differ substantially from fees charged by other institutions. Borrower hereby acknowledges receipt of the current fee schedule for such services, a copy of which is attached as Exhibit B. Borrower agrees to pay the fees pursuant to the schedule, and authorizes payment directly by increasing the principal balance of the Note, at the discretion of Lender.

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- (h) Borrower acknowledges that certain costs and expenses may be advanced by Lender and charged to Borrower, including, without limitation, appraisal fees, overnight delivery fees, messenger fees, credit reports, inspection fees and flood certification fees, such fees may include not only Lender's actual out-of-pocket costs, but additionally a reasonable mark-up. Borrower acknowledges and agrees that the mark-up will be an amount determined by Lender, but which shall be reasonable and/or customary in the banking industry, and will represent compensation for Lender's oversight, review and analysis as well as profit for Lender. Borrower agrees to pay these charges for the services, and authorizes payment directly by increasing the principal balance of the Note, at the discretion of Lender.
- (i) **Collateral Inspection.** Borrower acknowledges that Lender may, in its sole discretion and from time to time, have the collateral inspected and evaluated, either by independent contractors or in-house employees, and that the costs incurred by Lender for such inspections shall be paid by Borrower. In the event that lender uses in-house resources for such inspection/valuation, Borrower acknowledges that the fee owed to Lender shall be \$1,500 in addition to expenses incurred by Lender in connection with the collateral inspection. Borrower hereby authorizes Lender, at Lender's discretion, to increase the principal balance of the Note to pay this fee and any other costs, expenses or fees payable to Lender.
- (j) Borrower, and each of them, agrees to provide Lender with its currently dated, certified financial statement on each anniversary date of the Note, as well as upon the request of Lender, all in form and detail satisfactory to Lender. Borrower acknowledges that its, or any of its, failure to timely deliver such statement shall constitute an event of default pursuant to the terms of the Note and other Loan Documents, which shall cause, without limitation, interest to accrue at the applicable default rate from the date of such failure.
- (k) Borrower represents and warrants that the liens of the Loan Documents shall secure the Note as hereby amended to the same extent as if the amendments made herein were set forth and described in the Note and Loan Documents.

6. **Title Policy Endorsements.** Concurrently with the execution of this Modification Agreement, Borrower, at its sole cost and expense, shall obtain and deliver to Lender an endorsement to its loan policy of title insurance ("Policy"), extending the effective date of the Policy through the recording of this Modification Agreement, insuring this Modification Agreement in Schedule A of the Policy, and insuring the priority of the Mortgage as modified by this Modification Agreement; and

7. **No Waiver.** Notwithstanding anything contained in this Modification Agreement to the contrary or any prior act of Lender or any procedure established by Lender with regard to the Loan, Borrower acknowledges and agrees that Lender has not heretofore waived any of its rights or

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remedies under the Loan Documents nor has Lender waived any of the duties or obligations of Borrower thereunder. No waiver by Lender of any covenant or condition under the Loan Documents shall be deemed a subsequent waiver of the same or any other covenant or condition. No covenant, term or condition of the Loan Documents shall be deemed waived by Lender unless waived in writing.

8. Miscellaneous.

- (a) Time is of the essence with respect to the payment, performance and observance of each and every covenant, agreement, condition, representation, warranty and obligation of Borrower under the Loan Documents.
- (b) This Modification Agreement may be executed by facsimile and/or in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute and be taken as one and the same instrument.
- (c) None of the covenants, terms or conditions of this Modification Agreement shall in any manner be altered, waived, modified, changed or abandoned, except by written instrument, duly signed and delivered by all the parties hereto.
- (d) This Modification Agreement contains the entire agreement between the parties hereto as to the subject matter hereof and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise, of any kind.
- (e) The recitals to this Modification Agreement are hereby incorporated into and made a part of this Modification Agreement and shall constitute covenants and representations of Borrower and shall be binding upon and enforceable against Borrower.
- (f) Any defined terms contained in this Modification Agreement not otherwise defined in this Modification Agreement shall have the meaning as set forth in the Loan Documents.
- (g) Borrower acknowledges that Lender has made no agreement with Borrower to extend the maturity of the Loan beyond the Maturity Date set forth in this Modification and that Lender has made no representation to Borrower that a further extension will be agreed to in the future.

9. CREDIT REPORTING. YOU ARE HEREBY NOTIFIED THAT LENDER MAY REPORT INFORMATION ABOUT YOUR LOAN ACCOUNT TO CREDIT BUREAUS. FURTHERMORE, LATE PAYMENTS, MISSED PAYMENTS, OR OTHER DEFAULTS ON YOUR LOAN ACCOUNT MAY BE REFLECTED IN YOUR CREDIT REPORT. BY YOUR SIGNATURE BELOW, YOU ACKNOWLEDGE RECEIPT OF THIS NOTICE.

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[Signature Pages Follow]

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IN WITNESS WHEREOF, the undersigned executed or caused this Modification Agreement to be executed as of the day and year first above written.

BORROWER:

L.P. DEVELOPMENT III, LLC,
an Illinois limited liability company

By: _____

Frederick Latsko
Manager

STATE OF ILLINOIS)

) SS:

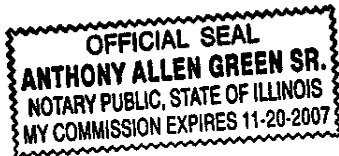
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **FREDERICK S. LATSKO**, the Manager of BORROWER 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 severally acknowledged that he signed and delivered the said instruments as his free and voluntary act, and on behalf of the free and voluntary act of Borrower for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 5th day of March, 2005.

Anthony A. Green, Sr.
Notary Public

My Commission expires: 11-20-07



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EXHIBIT "A" LEGAL DESCRIPTION

PARCEL 1:

UNIT NOS. 2313, 2319, 2327 AND 2329 IN THE BOSWORTH PLACE TOWNHOMES CONDOMINIUM, AS DELINEATED ON AND DEFINED ON THE PLAT OF SURVEY OF THE FOLLOWING DESCRIBED PARCEL OF REAL ESTATE:

LOTS 38 TO 45, INCLUSIVE, IN BLOCK 1 IN NICKERSON'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE WEST HALF OF BLOCK 15 AND OF SUBDIVISION BLOCK 5 OF THE EAST HALF OF SAID BLOCK 15 OF SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT 0406818088, AS AMENDED FROM TIME TO TIME, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS.

PARCEL 2:

LOTS 46 AND 47 IN BLOCK 1 IN NICKERSON'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE WEST HALF OF BLOCK 15 AND OF SUBDIVISION BLOCK 5 OF THE EAST HALF OF SAID BLOCK 15 OF SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 2313, 2319, 2327 and 2329 North Bosworth Avenue
(Parcel 1)

2299 North Clybourn Avenue (Parcel 2)

PIN No.: 14-32-101-056-0000 (Parcel 1)
14-32-101-043-0000 (Parcel 2)

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EXHIBIT B First Bank/Illinois

COMMON COMMERCIAL REAL ESTATE LOAN FEES

This is a partial listing of commonly incurred fees and is not intended to be a complete listing. Trust fees are not included.

<u>INSURANCE REVIEW:</u>	\$750.00
<u>FLOOD ZONE CERTIFICATION:</u>	\$40.00
<u>DOCUMENTATION FEE (in-house closings and modifications):</u>	\$1,500.00
<u>PAYOFF LETTER RESEARCH AND PREP.:</u>	\$200.00
<u>RELEASES:</u> FULL & PARTIAL:	\$250.00
<u>CONSTRUCTION LOAN DRAW REQUESTS:</u> PROJECTS UNDER \$2,000,000 OF VALUE:	\$250.00
PROJECTS \$2,000,000 OF VALUE AND OVER:	\$500.00
<u>OVERNIGHT COURIER:</u>	\$25.00
<u>MESSENGER—CHICAGO AREA:</u>	\$75.00
COLLATERAL INSPECTION BY BANK PERSONNEL	\$1,500.00, plus costs

All other expenses incurred by the Bank will be passed on to the borrower.

effective 12/04—subject to change without notice