

# UNOFFICIAL COPY

**RECORDATION REQUESTED BY:**

Northside Community Bank  
Attention: William Kivit  
8060 W. Oakton Street  
Niles, Illinois 60714



Doc#: 0520756059  
Eugene "Gene" Moore Fee: \$50.00  
Cook County Recorder of Deeds  
Date: 07/26/2005 02:49 PM Pg: 1 of 14

**WHEN RECORDED MAIL TO:**

Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603  
Attention: David C. Birks

**This Instrument prepared by:**

Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603  
Attention: David C. Birks

**SECOND MODIFICATION AGREEMENT**

This Second Modification Agreement ("Modification Agreement") is made as of June 30, 2005, among NORTHSIDE COMMUNITY BANK, an Illinois state bank ("Lender") and THE BUCKINGHAM, LLC, an Illinois limited liability company ("Borrower").

**WITNESSETH**

**WHEREAS**, Borrower and Lender entered into a Business Loan Agreement, dated June 28, 2004, as amended by that certain First Modification Agreement, dated April 26, 2005, recorded on May 16, 2005 with the Cook County Recorder's Office as document number 0513650189 ("First Modification") (collectively, and as may be further amended from time to time, the "Loan Agreement");

**WHEREAS**, Borrower executed a Promissory Note in the principal amount of Six Million Seven Hundred and Fifty Thousand and No/100 Dollars (\$6,750,000.00), dated June 28, 2004 (as amended from time to time, the "\$6,750,000 Note") in favor of Lender;

**WHEREAS**, Borrower executed a Mortgage, dated June 28, 2004, in favor of Lender, recorded on July 8, 2004 in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 0419034078, as amended by the First Modification (collectively, and as may be further amended from time to time, the "Mortgage"), for the real property described on the attached Exhibit A, commonly known as 59 E. Van Buren Street, Chicago, Cook County, Illinois ("Property");

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**WHEREAS**, Borrower executed an Assignments of Rents, dated June 28, 2004, in favor of Lender, recorded on July 8, 2004, in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 0419034079, as amended by the First Modification (collectively, and as may be further amended from time to time, the "Assignment"), for the Property;

**WHEREAS**, Borrower executed a Commercial Security Agreement, dated June 28, 2004, as amended by the First Modification (collectively, and as may be further amended from time to time, the "Security Agreement"), in favor of Lender;

**WHEREAS**, David S. Dewey ("Dewey"), Gerry Curciarello ("Curciarello"), Patrick O'Leary ("O'Leary"), and Joan Siff ("Siff"), (Dewey, Curciarello, O'Leary and Siff are individually, a "Guarantor" and collectively, the "Guarantors") each executed and delivered to Lender that certain Environmental Indemnity Agreement, dated June 28, 2004, as amended by the First Modification (collectively, and as may be further amended from time to time, the "Environmental Agreement"), in favor of Lender;

**WHEREAS**, Borrower executed a Promissory Note in the principal amount of Eight Hundred Thousand and No/100 Dollars (\$800,000.00), dated April 26, 2005 (as amended from time to time, the "\$800,000 Note") in favor of Lender;

**WHEREAS**, Dewey, Curciarello, O'Leary, and Siff each individually executed and delivered to Lender a separate Replacement Commercial Guaranty, each dated April 26, 2005 (as amended from time to time, individually the "Guaranty" and collectively, the "Guaranties"), in favor of Lender;

**WHEREAS**, Borrower has requested Lender to amend certain provisions of the Loan Agreement, the Mortgage, the Assignment, the Security Agreement and the Environmental Agreement (collectively, the "Loan Documents") in order to, among other things, (i) extend the Maturity Date of the \$6,750,000 Note from June 28, 2005 to December 28, 2005 and (ii) extend the Maturity Date of the \$800,000 Note from June 28, 2005 to December 28, 2005; and

**WHEREAS**, Lender is willing to grant Borrower's requests on the terms and condition hereinafter set forth.

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein, and of any amendments or modifications heretofore, now or hereafter made by Lender to Borrower, the parties hereto hereby agree as follows:

All capitalized terms used herein without definition shall have the meaning as set forth in the Loan Documents.

1. **Amendment to definitions of the Loan Agreement.** The Loan Agreement is hereby modified by replacing the definitions of "Agreement" and "Note" with the following:

**Agreement.** The word "Agreement" means this Business Loan Agreement dated as of June 28, 2004, between Borrower and Lender, as amended by that certain First Modification

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Agreement between Borrower and Lender, dated as of April 26, 2005 ("First Modification") and that certain Second Modification Agreement between Borrower and Lender, dated as of June 30, 2005 ("Second Modification"), and as may be further amended from time to time.

**Note.** The word "Note" means individually and collectively the (a) Promissory Note from Borrower to Lender dated as of June 28, 2004 in the principal amount of Six Million Seven Hundred Fifty Thousand And No/100 Dollars (\$6,750,000.00), as amended by the Second Modification; and (b) Promissory Note from Borrower to Lender dated as of April 26, 2005 in the principal amount of Eight Hundred Thousand And No/100 Dollars (\$800,000.00), as amended by the Second Modification, in each case together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory notes.

2. **Amendment to Section 1.1 (b) of the Loan Agreement.** The Loan Agreement is hereby modified deleting Section 1.1(b) and replacing it with the following:

**(b) Loan.** Subject to the terms of this Agreement, Lender shall make a SIX MILLION SEVEN HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLAR (\$6,750,000.00) loan available to Borrower in one or more advances (as requested by Borrower in writing as set forth herein), provided that the first advance shall be in an amount not less than \$5,800,000.00 and further provided that all advances shall be made prior to December 28, 2004 at which time, provided that there is no outstanding Event of Default or Unmatured Default, the full amount of the Loan shall be advanced by Lender into Borrower's operating account with Lender (including the unadvanced amount of the interest reserve described below). This Loan shall be payable in seventeen (17) monthly installments of interest only with the first such payment due on July 28, 2004, with each additional payment due on the same day of each month thereafter, and with, unless otherwise accelerated by Lender, a final payment of all amounts due and owing on December 28, 2005 (the "Maturity Date"). Subject to the terms of this Agreement, Lender shall make an EIGHT HUNDRED THOUSAND AND NO/100 DOLLAR (\$800,000.00) loan available to Borrower in one or more advances (as requested by Borrower in writing as set forth herein), to be made upon Borrower's request provided that there is no outstanding Event of Default or Unmatured Default. This Loan shall be payable in eight (8) monthly installments of interest only with the first such payment due on April 28, 2005, with each additional payment due on the same day of each month thereafter, and with, unless otherwise accelerated by Lender, a final payment of all amounts due and owing on the Maturity Date. From the amount of the Loan, the amount of \$135,000.00 shall be reserved by Lender and advanced, subject to the occurrence of an Unmatured Default or Event of Default, to fund Borrower's monthly interest payment to Lender.

2. **Amendment to \$6,750,000 Note.** The Maturity Date of the \$6,750,000 Note is extended from June 28, 2005 to December 28, 2005.

3. **Amendment to \$800,000 Note.** The Maturity Date of the \$800,000 Note is extended from June 28, 2005 to December 28, 2005.

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4. **Amendment to Mortgage.** The Mortgage is hereby modified by replacing the definitions of "Mortgage" and "Note" with the following:

**Mortgage.** The word "Mortgage" means this Mortgage between Grantor and Lender, as amended by that certain First Modification Agreement between Grantor and Lender, dated as of April 26, 2005 ("First Modification") and that certain Second Modification Agreement between Grantor and Lender, dated as of June 30, 2005 ("Second Modification"), and as may be further amended from time to time.

**Note.** The word "Note" means individually and collectively the (a) Promissory Note from Grantor to Lender dated as of June 28, 2004 in the principal amount of Six Million Seven Hundred Fifty Thousand And No/100 Dollars (\$6,750,000.00), as amended by the Second Modification (with a maturity date of December 28, 2005) and (b) Promissory Note from Grantor to Lender dated as of April 26, 2005 in the principal amount of Eight Hundred Thousand And No/100 Dollars (\$800,000.00) as amended by the Second Modification (with a maturity date of December 28, 2005), in each case together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory notes.

5. **Amendment to Assignment.** The Assignment is hereby modified by replacing the definitions of "Assignment" and "Note" with the following:

**Assignment.** The word "Assignment" means this Assignment of Rents, dated as of June 28, 2004, between Grantor and Lender, as amended by that certain First Modification Agreement between Grantor and Lender, dated as of April 26, 2005, and that certain Second Modification Agreement between Grantor and Lender, dated as of June 30, 2005 ("Second Modification") and as may be further amended from time to time, and includes without limitation all assignments and security interest provisions relating to the Rents.

**Note.** The word "Note" means individually and collectively the (a) Promissory Note from Grantor to Lender dated as of June 28, 2004 in the principal amount of Six Million Seven Hundred Fifty Thousand and No/100 Dollars (\$6,750,000.00), as amended by the Second Modification (with a maturity date of December 28, 2005) and (b) Promissory Note from Grantor to Lender dated as of April 26, 2005 in the principal amount of Eight Hundred Thousand and No/100 Dollars (\$800,000.00), as amended by the Second Modification (with a maturity date of December 28, 2005), in each case together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory notes.

6. **Amendment to Security Agreement.** The Security Agreement is hereby modified by replacing the definitions of "Agreement," "Indebtedness" and "Note" with the following:

**Agreement.** The word "Agreement" means this Commercial Security Agreement, dated as of June 28, 2004, between Grantor and Lender, as amended by that certain First Modification Agreement between Grantor and Lender, dated as of April 26, 2005 and that

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certain Second Modification Agreement between Grantor and Lender, dated as of June 30, 2005 ("Second Modification") and as may be further amended from time to time, together with all exhibits and schedules attached to this Agreement from time to time.

**Note.** The word "Note" means individually and collectively the (a) Promissory Note from Grantor to Lender dated as of June 28, 2004 in the principal amount of Six Million Seven Hundred Fifty Thousand And No/100 Dollars (\$6,750,000.00), as amended by the Second Modification (with a maturity date of December 28, 2005) and (b) Promissory Note from Grantor to Lender dated as of April 26, 2005 in the principal amount of Eight Hundred Thousand And No/100 Dollars (\$800,000.00), as amended by the Second Modification (with a maturity date of December 28, 2005), in each case together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory notes.

7. **Amendment to Environmental Agreement.** The Environmental Agreement is hereby modified by replacing the definitions of "Agreement" and "Note" with the following:

**Agreement.** The word "Agreement" means this Agreement between the Indemnitors and Lender, as amended by that certain First Modification Agreement between Borrower and Lender, dated as of April 26, 2005, and that certain Second Modification Agreement between Borrower and Lender, dated as of June 30, 2005 ("Second Modification") and as may be further amended from time to time.

**Note.** The word "Note" means individually and collectively the (a) Promissory Note from Borrower to Lender dated as of June 28, 2004 in the principal amount of Six Million Seven Hundred Fifty Thousand and No/100 Dollars (\$6,750,000.00), as amended by the Second Modification (with a maturity date of December 28, 2005) and (b) Promissory Note from Borrower to Lender dated as of April 26, 2005 in the principal amount of Eight Hundred Thousand and No/100 Dollars (\$800,000.00), as amended by the Second Modification (with a maturity date of December 28, 2005), in each case together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory notes.

8. **Modification Fee.** Borrower acknowledges that, as partial consideration for Lender modifying the terms of the Loan, as set forth herein, Borrower shall pay a fee to Lender in the amount of Five Hundred and no/100 Dollars (\$500.00), which fee has been fully earned by Lender, is nonrefundable and is due and payable to Lender as of the date of this Modification Agreement.

9. **Conditions Precedent.** The parties agree that Lender's obligations under this Modification Agreement shall be subject to the Lender's receipt of the following:

- (a) A fully executed Resolution of Borrower approving this Modification Agreement.
- (b) A title insurance policy or policies written on standard form, from a title

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insurance company acceptable to Lender, in the aggregate amount of the loans to Borrower, insuring the Mortgage on the Property to be a valid and first lien, clear of all defects and encumbrances, except such defects and encumbrances that the Lender shall approve, and containing such additional endorsements as Lender, in its sole discretion, shall require.

- (c) The most recent annual operating statement for the Borrower.
- (d) The most recent tax returns and personal financial statements for each Guarantor.
- (e) A certified copy of a special form policy covering the Collateral, in form and substance satisfactory to Lender, in an amount acceptable to Lender, identifying the location of the Collateral and naming Lender as mortgagee under the loss payee clause.
- (f) Borrower's payment of the Modification Fee.

10. **Further Modifications.** Borrower and Lender hereby agree to use their best efforts to enter into an agreement to extend the Loan from the current Maturity Date, to a date acceptable to both parties, and upon terms and conditions acceptable to both parties, before the Maturity Date.

11. **Related Documents.** Effective as of the date hereof, and without further notice, revision, modification or amendment, the Related Documents are hereby amended as appropriate to be consistent with the terms hereof.

12. **Continuation.** Except as otherwise specifically modified or amended by the terms of this Modification Agreement or other amendments, which have been mutually agreed in writing by and between Borrower and Lender, the Loan Documents and all provisions contained therein, respectively, shall continue in full force and effect.

13. **Reaffirmation.** Borrower, by execution of this Modification Agreement, hereby reaffirms, ratifies, and remakes the covenants, warranties and representations contained in the Loan Documents.

14. **Counterparts.** This Modification Agreement may be executed simultaneously in any number of counterparts, which shall, collectively and separately, constitute one agreement.

15. **No Defenses.** Borrower represents to the Lender that, as of the date hereof, they have no defenses, setoffs, claims or counterclaims of any kind or nature whatsoever against Lender in connection with the Loan Documents or any amendments to said documents or any action taken or not taken by the Lender with respect thereto or with respect to the collateral. Without limiting the generality of the foregoing, Borrower hereby releases and forever discharges Lender, its affiliates, and each of its officers, agents, employees, attorneys, insurers, successors and assigns, from any and all liabilities, or causes of action, known or unknown, arising out of any action or inaction as of the date hereof with respect to the Loan Documents.

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16. **Disclaimer.** Borrower expressly disclaims any reliance on any oral representation made by Lender with respect to the subject matter of this Modification Agreement. Borrower acknowledges and agrees that Lender is specifically relying upon the representations, warranties, releases and agreements contained herein, and that this Modification Agreement is executed by Borrower and delivered to Lender as an inducement to extend further funds to the Borrower.

17. **Costs.** Lender may pay someone else to help collect the loans secured by the Loan Documents and to enforce the Loan Documents, and the Borrower will pay that amount, provided an Event of Default has occurred. This includes, subject to any limits under applicable law, Lender's attorneys' fees and legal expenses, whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also will pay any court costs, in addition to all other sums provided by law.

18. **Jurisdiction, Jury Waiver.** **This Modification Agreement has been delivered to Lender and accepted by Lender in the State of Illinois. If there is a lawsuit, under the Loan Documents, this Modification Agreement, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Cook County, the State of Illinois. LENDER AND BORROWER HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER LENDER AND BORROWER AGAINST THE OTHERS. This Modification Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.**

19. **Successors and Assigns.** All covenants and agreements contained by or on behalf of Borrower shall bind its successors and assigns and shall inure to the benefit of Lender, its successors and assigns. Borrower shall not, however, have the right to assign its rights under this Modification Agreement or the Loan Documents or any interest therein, without the prior written consent of Lender.

(signatures to follow)

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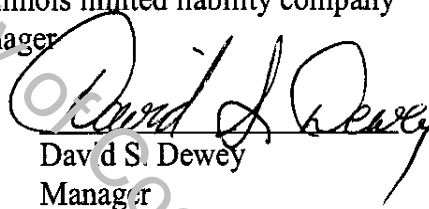
**IN WITNESS WHEREOF**, the parties named below have caused this Second Modification Agreement to be executed and delivered personally or by their respective duly authorized officers as of the day and year specified at the beginning hereof.

**BORROWER:**

**THE BUCKINGHAM, LLC**  
an Illinois limited liability company

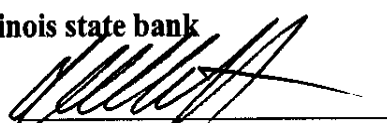
By: Van Buren/Wabash, LLC  
an Illinois limited liability company  
Its Manager

By: Brownstone/Van Buren, LLC  
an Illinois limited liability company  
Its Manager

By:   
David S. Dewey  
Its Manager

**LENDER:**

**NORTHSIDE COMMUNITY BANK,**  
an Illinois state bank

By:   
Name: William Kivit  
Its: Vice President

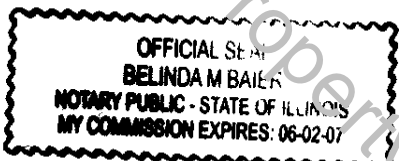


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## BORROWER ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that David S. Dewey, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such representative of Borrower, appeared before me this day in person and acknowledged that he signed and delivered this instrument as his free and voluntary act, and as the free and voluntary act of Borrower, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28<sup>th</sup> day of June, 2005.

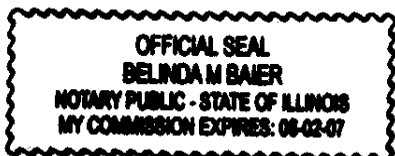


Belinda M Baier  
Notary Public

## LENDER ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that William Kivit, personally known to me to be the same person whose name is subscribed to the foregoing instrument individually and as such officer of the NORTHSIDE COMMUNITY BANK appeared before me this day in person and acknowledged that he signed and delivered this instrument as his free and voluntary act, and as the free and voluntary act of NORTHSIDE COMMUNITY BANK for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28<sup>th</sup> day of June, 2005.



Belinda M Baier  
Notary Public

## GUARANTOR ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that David S. Dewey, personally known to me to be the same person whose name is subscribed to the foregoing instrument individually appeared before me this day in person and acknowledged that he signed and delivered this instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28<sup>th</sup> day of June, 2005.

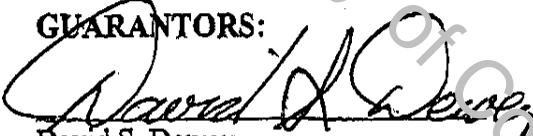



Belinda M Baier  
Notary Public

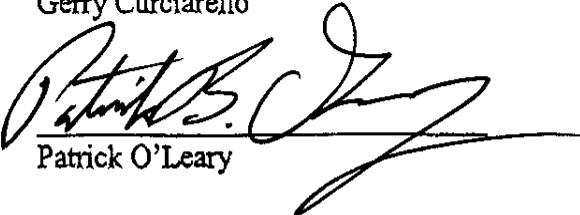
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**Acknowledgment and Agreement.** Each Guarantor expressly agrees to the terms, provisions and conditions of this Second Modification Agreement, dated June 30, 2005, ("Second Modification") between The Buckingham, LLC, an Illinois limited liability company ("Borrower") and NorthSide Community Bank ("Lender"), including, without limitation, (i) the changes set forth in Section 6 related to the Environmental Indemnification Agreement executed by each Guarantor, (ii) the extension of the Maturity Date of that certain Promissory Note, dated June 28, 2004, by Borrower in favor of Lender, in the original principal amount of \$6,750,000.00 from June 28, 2005 to December 28, 2005, and (iii) the extension of the Maturity Date of that certain Promissory Note, dated April 26, 2005 by Borrower in favor of Lender, in the original principal amount of \$800,000.00 from June 28, 2005 to December 28, 2005. Each Guarantor hereby reaffirms each and every obligation for payment and performance as set forth in their Replacement Commercial Guaranty, dated as of April 26, 2005. Each Guarantor acknowledges that they remain unconditionally and absolutely liable for the due and punctual payment of the amounts set forth in their Replacement Commercial Guaranty.

**GUARANTORS:**

  
 David S. Dewey

  
 Gerry Curciarello

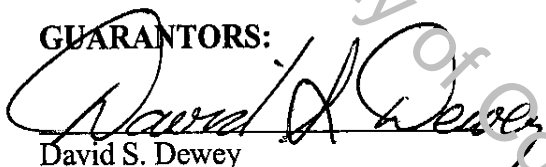
  
 Patrick O'Leary

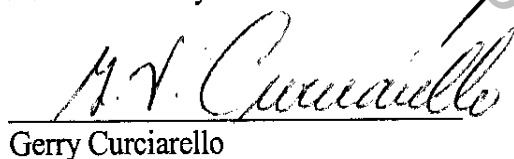
\_\_\_\_\_  
 Joan Siff

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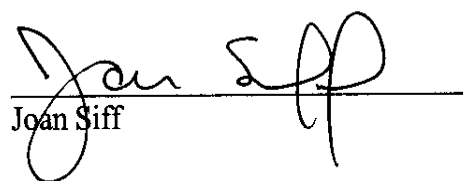
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**GUARANTORS:**

  
 David S. Dewey

  
 Gerry Curciarello

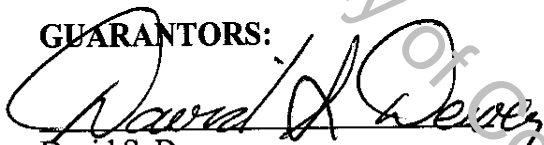
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 Patrick O'Leary

  
 Joan Siff

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**Acknowledgment and Agreement.** Each Guarantor expressly agrees to the terms, provisions and conditions of this Second Modification Agreement, dated June 30, 2005, ("Second Modification") between The Buckingham, LLC, an Illinois limited liability company ("Borrower") and NorthSide Community Bank ("Lender"), including, without limitation, (i) the changes set forth in Section 6 related to the Environmental Indemnification Agreement executed by each Guarantor, (ii) the extension of the Maturity Date of that certain Promissory Note, dated June 28, 2004, by Borrower in favor of Lender, in the original principal amount of \$6,750,000.00 from June 28, 2005 to December 28, 2005, and (iii) the extension of the Maturity Date of that certain Promissory Note, dated April 26, 2005 by Borrower in favor of Lender, in the original principal amount of \$800,000.00 from June 28, 2005 to December 28, 2005. Each Guarantor hereby reaffirms each and every obligation for payment and performance as set forth in their Replacement Commercial Guaranty, dated as of April 26, 2005. Each Guarantor acknowledges that they remain unconditionally and absolutely liable for the due and punctual payment of the amounts set forth in their Replacement Commercial Guaranty.

**GUARANTORS:**

  
 David S. Dewey

  
 Gerry Curciarello

\_\_\_\_\_  
 Patrick O'Leary

\_\_\_\_\_  
 Joan Siff

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## GUARANTOR ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that Gerry Curciarello, personally known to me to be the same person whose name is subscribed to the foregoing instrument individually appeared before me this day in person and acknowledged that he signed and delivered this instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28<sup>th</sup> day of June, 2005.

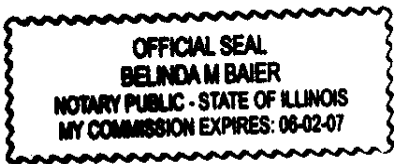


Belinda M Baier  
Notary Public

## GUARANTOR ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that Patrick O'Leary, personally known to me to be the same person whose name is subscribed to the foregoing instrument individually appeared before me this day in person and acknowledged that he signed and delivered this instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28<sup>th</sup> day of June, 2005.

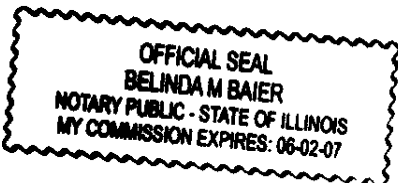


Belinda M Baier  
Notary Public

## GUARANTOR ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that Joan Siff, personally known to me to be the same person whose name is subscribed to the foregoing instrument individually appeared before me this day in person and acknowledged that he signed and delivered this instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28<sup>th</sup> day of June, 2005.



Belinda M Baier  
Notary Public

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SECOND MODIFICATION AGREEMENT  
Exhibit A  
Real Property

**LEGAL DESCRIPTION**

Property Address: 59 E. Van Buren Street, Chicago, Illinois

Tax Parcel Number: 17-05-109-001; 17-15-109-002; 17-15-109-004; 17-15-109-005;  
17-15-109-014

G:\CLIENTS\NORTHSIDE (1496)\BUCKINGHAM LLC (78)\JUNE 2005 MODIFICATION\SECOND MODIFICATION AGREEMENT,  
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