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Doc#: 0609433271 Fee: \$42.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/04/2006 11:25 AM Pg: 1 of 10

Prepared by and
When recorded Mail To:

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

THIRD AMENDMENT TO LOAN DOCUMENTS

THIS THIRD AMENDMENT TO LOAN DOCUMENTS (the "**Amendment**") dated as of March 24, 2006, 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), which Revolving Note was amended and restated by that certain Amended and Restated Revolving Note dated December 20, 2004, payable to Lender in the maximum stated principal amount of Twenty-One Million and No/100 Dollars (\$21,000,000.00), and which Revolving Note was further amended and restated by that certain Second Amended and Restated Revolving Note dated November 10, 2005, payable to Lender in the maximum stated principal amount of Twenty-Five Million and No/100 Dollars (\$25,000,000.00) (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 Notes), or such earlier date as each such

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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.

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, which Construction Loan Agreement was amended by that certain First Amendment to Loan Documents dated as of December 20, 2004, by and between Borrower and Lender (the "**First Amendment**") and by that certain Second Amendment to Loan Documents dated as of November 10, 2005, by and between Borrower and Lender (the "**Second Amendment**"; such Construction Loan Agreement, as amended by the First Amendment and the Second Amendment, and as the same has been or may be further 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 (the "**Mortgage**"), encumbering the real property described in **Exhibit A** attached hereto, which Mortgage was amended by the First Amendment and the Second Amendment, (ii) that certain Environmental Indemnity Agreement dated May 24, 2004, from Borrower and James D. Letchinger, in favor of Lender (the "**Environmental Indemnity**"), which Environmental Indemnity was amended by the First Amendment and the Second Amendment, (iii) that certain Collateral Assignment of Sales Contracts dated May 24, 2004, from Borrower in favor of Lender (the "**Assignment of Sales Contracts**"), which Assignment of Sales Contracts was amended by the First Amendment and the Second Amendment, (iv) that certain Security Agreement and Assignment of Contractual Agreements Affecting Real Estate dated May 24, 2004, from Borrower in favor of Lender (the "**Assignment of Contracts**"), which Assignment of Contracts was amended by the First Amendment and the Second Amendment, 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 (the "**Assignment of Development Agreement**"), which Assignment of Developer Agreement was amended by the First Amendment and the Second Amendment (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, (i) agree to decrease the maximum principal amount of the Revolving Note to Eleven Million Seven Hundred Fifty Thousand and No/100 Dollars (\$11,750,000.00), (ii) agree to increase the maximum principal amount of the Term Note to Five Million Five Hundred Thirty Thousand Eight Hundred and No/100 Dollars (\$5,530,800.00), and (iii) extend the Maturity Date of each of the Notes to November 24, 2006.

WHEREAS, Lender has agreed to so modify the Revolving Note and the Term Note as aforesaid provided, among other things, that Borrower executes this Amendment whereby the Loan Documents are modified to reflect that the Revolving Note has been so decreased, the

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Term Note has been so increased and the Maturity Date of the Notes has been so extended, in accordance with the terms of the modifications 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 decreased to Seventeen Million Two Hundred Eighty Thousand Eight Hundred and No/100 Dollars (\$17,280,800.00). To reflect such modification, any and all references in the Loan Documents to "Twenty-Five Million Seven Hundred Thousand and No/100 Dollars (\$25,700,000.00)" are hereby deleted and replaced with the amount "Seventeen Million Two Hundred Eighty Thousand Eight Hundred and No/100 Dollars (\$17,280,800.00)".

3. Borrower and Lender agree that the maximum principal amount of the Revolving Note has been decreased to Eleven Million Seven Hundred Fifty Thousand and No/100 Dollars (\$11,750,000.00). To reflect such modification, any and all references to the maximum principal amount of the Revolving Note in the Loan Documents to "Twenty-Five Million and No/100 Dollars (\$25,000,000.00)" are hereby deleted and replaced with the amount "Eleven Million Seven Hundred Fifty Thousand and No/100 Dollars (\$11,750,000.00)".

4. Borrower and Lender agree that the maximum principal amount of the Term Note has been increased to Five Million Five Hundred Thirty Thousand Eight Hundred and No/100 Dollars (\$5,530,800.00). To reflect such modification, any and all references to the maximum principal amount of the Term Note in the Loan Documents to "Seven Hundred Thousand and No/100 Dollars (\$700,000.00)" are hereby deleted and replaced with the amount "Five Million Five Hundred Thirty Thousand Eight Hundred and No/100 Dollars (\$5,530,800.00)".

5. Borrower and Lender agree that the Maximum Disbursed Amount (as defined in the Loan Agreement) has been decreased to Eleven Million Seven Hundred Fifty Thousand and No/100 Dollars (\$11,750,000.00). To reflect such modification, any and all references to the Maximum Disbursed Amount of the Loan in the Loan Documents to "Thirty Million Five Hundred Eighty-Five Thousand Nine Hundred Eleven and 62/100 Dollars (\$30,585,911.62)" are hereby deleted and replaced with the amount "Eleven Million Seven Hundred Fifty Thousand and No/100 Dollars (\$11,750,000.00)".

6. Borrower and Lender agree that the Maximum Outstanding Amount (as defined in the Loan Agreement) has been decreased to Seventeen Million Two Hundred Eighty Thousand Eight Hundred and No/100 Dollars (\$17,280,800.00). To reflect such modification, any and all references to the Maximum Outstanding Amount of the Loan in the Loan Documents to "Twenty-Five Million Seven Hundred Thousand and No/100 Dollars (\$25,700,000.00)" are hereby deleted and replaced with the amount "Seventeen Million Two Hundred Eighty Thousand Eight Hundred and No/100 Dollars (\$17,280,800.00)".

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7. Borrower and Lender agree that the Maturity Date of each of the Notes has been extended to November 24, 2006. To reflect such extension, any and all references to the Maturity Date in the Notes is hereinafter replaced with the date "November 24, 2006".

8. Borrower and Lender acknowledge and agree that notwithstanding anything to the contrary contained in Section 6.1 of the Loan Agreement, in addition to all previous amounts used and/or reserved for the Interest Reserve (as defined in the Loan Agreement), (a) an additional Two Hundred Twenty Thousand and No/100 Dollars (\$220,000.00) of proceeds from the Revolving Note and (b) an additional Two Hundred Fifty-Two Thousand Five Hundred and No/100 Dollars (\$252,500.00) of proceeds from the Term Note shall be reserved for the Interest Reserve.

9. **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 third 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 no additional liens impacting the real property described in such Title Policy;

(d) Borrower has paid to Lender a modification fees in the amount of (a) Five Thousand and No/ 100 Dollars \$5,000.00) with respect to the Revolving Note and (b) Forty-Eight Thousand Three Hundred Eight and No/100 Dollars (\$48,308.00) with respect to the Term Note (collectively, 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 evidence that Borrower has obtained not less than twenty (20) Approved Sales Contracts (as defined in the Loan Agreement);

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

(h) 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.

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10. 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.

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

12. 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.

13. 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.

(signature page follows)

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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: Michael Carlini
Its: VICE PRESIDENT

(Handwritten signature)

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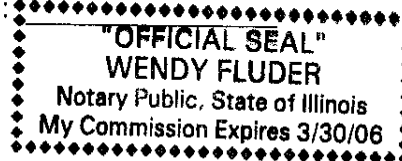
STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, WENDY FLUDER, 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 24th day of March, 2006.

Wendy Fluder
 Notary Public

My commission expires:

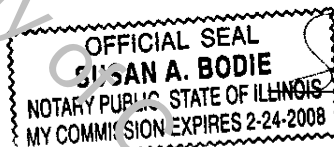


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STATE OF ILLINOIS)
) SS.
 COUNTY OF DUPAGE)

I, SUSAN A. BODIE, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that INERID CARLINO, personally known to me to be the 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 she signed and delivered the said instrument as his/her free and voluntary act as VICE PRESIDENT on of such banking corporation as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 31st day of March, 2006.



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.

EXCEPT THE FOLLOWING:

THE EAST 38.40 FEET OF LOTS 1, 2, 3, 4 AND 5 IN SUBDIVISION OF LOT 4 IN BLOCK 16 OF BUSHNELL'S ADDITION TO CHICAGO IN THE EAST ½ OF THE SOUTHEAST ¼ 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