

UNOFFICIAL COPY



Doc#: 0616404130 Fee: \$60.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/13/2006 01:00 PM Pg: 1 of 19

ILLINOIS

Permanent Tax Index Number:

11-18-327-003-0000

PROPERTY ADDRESS:

1313-1321 Oak Street
Evanston, Illinois 60201

This space reserved for Recorder's use only.

FIFTH MODIFICATION OF LOAN DOCUMENTS

by

DEMPSTER OAK II, LLC,

an Illinois limited liability company, William B. Silverstein and Thomas B. Silverstein,

to and for the benefit of

**LASALLE BANK NATIONAL ASSOCIATION,
a national banking association**

**THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:**

Aaron B. Zarkowsky
Deutsch, Levy & Engel, Chartered
225 W. Washington Street, Suite 1700
Chicago, Illinois 60606

Box 400-CTCC

20
P

7822 986 RR RF 10/13

UNOFFICIAL COPY

FIFTH MODIFICATION OF LOAN DOCUMENTS

THIS FIFTH MODIFICATION OF LOAN DOCUMENTS (this "Modification") is made as of the 1ST day of May, 2006, by and among **DEMPSTER/OAK II, LLC**, an Illinois limited liability company ("Borrower"), **William B. Silverstein and Thomas B. Silverstein**, (together, "Guarantor") and **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns ("Lender").

RECITALS:

A. The Lender originally made a loan (the "Loan") to the Guarantors under and pursuant to that certain Mortgage Loan Agreement dated as of August 4, 1999, executed by and among the Guarantors and the Lender (together with any and all amendments thereto, the "Loan Agreement"), and as evidenced by that certain Mortgage Note dated August 4, 1999 in the original principal amount of Two Million Three Hundred Eighty Five Thousand and 00/100 Dollars (\$2,385,000), jointly and severally executed by the Guarantors and made payable to the order of the Lender, and maturing on August 4, 2002 (the "Original Note").

B. The Loan is secured by, among other things the following documents (together with the Loan Agreement, the Original Note and any and all other documents evidencing or securing the Loan being collectively referred to herein as the "Original Loan Documents"): (i) Mortgage and Security Agreement dated as of August 4, 1999, jointly and severally executed by the Guarantors to and for the benefit of the Lender, and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on August 6, 1999 as Document Number 99749282 (the "Mortgage"), which Mortgage encumbers the real property legally described on Exhibit "A" attached hereto and made a part hereof (the "Premises"); (ii) Assignment of Rents and Leases dated as of August 4, 1999, jointly and severally executed by the Guarantors to and for the benefit of the Lender, and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on August 6, 1999 as Document Number 99749283 (the "Assignment of Rents"), which Assignment of Rents encumbers the Premises; (iii) Security Agreement dated as of August 4, 1999, jointly and severally executed by the Guarantors to and for the benefit of the Lender (the "Security Agreement"); and (iv) Environmental Indemnity Agreement dated as of August 4, 1999, jointly and severally executed by the Guarantors to and for the benefit of the Lender (the "Environmental Indemnity").

C. Under and pursuant to that certain First Modification of Loan Documents dated as of February 28, 2002, executed by and among the Guarantors and the Lender, and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on March 7, 2002 as Document No. 0020259964 (the "First Modification"): (i) the maturity date of the Loan was extended from August 4, 2002 to August 4, 2005, (ii) the principal amount of the Note was increased by Seven Hundred Five Thousand and 00/100 Dollars (\$705,000.00), as evidenced by that certain Amended and Restated Mortgage Note dated February 28, 2002 in the original principal amount of Three Million Ninety Thousand and 00/100 Dollars (\$3,090,000.00), jointly and severally executed by the Guarantors and made payable to the order of the Lender (the "First Restated Note"), and (iii) the

UNOFFICIAL COPY

interest rate and the repayment terms of the Loan were modified.

D. Under and pursuant to a Deed recorded with the Office of the Recorder of Deeds of Cook County, Illinois the Guarantors transferred their fee interest in the Premises to the Borrower.

E. Under and pursuant to that certain Assignment and Assumption, Allonge and Second Modification of Loan Documents dated as of September 1, 2002, executed by and among the Borrower, the Guarantors and the Lender, and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on October 25, 2002 as Document No. 0021177269 (the "Second Modification"), the Lender consented to the transfer of the Guarantors' fee interest in the Premises to the Borrower, and the Borrower (i) assumed all of the obligations and liabilities of the Guarantors for the Loan under and pursuant to the Loan Agreement, the First Restated Note, the Mortgage and the other Loan Documents, and (ii) executed an Allonge to the First Restated Note.

F. Under and pursuant to that certain Third Loan Modification Agreement dated as of October 1, 2003, executed by and among the Borrower, the Guarantors and the Lender and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on November 6, 2003 as Document No. 0331034073 (the "Third Modification"): (i) the maturity date of the Loan was extended from August 4, 2005 to October 1, 2008, (ii) the interest rate on the Loan was amended to a fixed per annum rate of interest equal to five and one-half percent (5.50%) and the repayment terms of the Loan were modified, (iii) the First Restated Note was restated and replaced by that certain Second Amended and Restated Promissory Note dated October 1, 2003 in the principal amount of Three Million Twenty Five Thousand Seven Hundred Seven and 38/100 Dollars (\$3,025,707.38), executed by the Borrower and made payable to the order of the Lender (the "Second Restated Note"), and (iv) the Guarantors were released as "borrowers" under the Loan Documents.

G. In connection, with the Third Modification and the Second Restated Note, the Guarantors executed and delivered to the Lender that certain Guaranty of Payment dated as of October 1, 2003 (the "Guaranty").

H. Under and pursuant to that certain Fourth Loan Modification Agreement dated as of January 31, 2005, executed by and among the Borrower, the Guarantors and the Lender and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on _____ as Document No. _____ (the "Fourth Modification," the Original Loan Documents, as modified and amended by the First Modification, the Second Modification, the Third Modification, and the Fourth Modification, together with the Second Restated Note and the Guaranty, being collectively referred to herein as the "Loan Documents"), the interest rate and the payment terms of the Second Restated Note were modified.

I. Borrower desires to amend the Loan Documents in order to further modify the payment terms contained in the Second Restated Note and for other purposes hereinafter set forth.

UNOFFICIAL COPY

J. Borrower and Guarantor acknowledge that the modifications to the Mortgage contained in this Modification, including but not limited to the addition of “cross-default and “cross-collateralization” language for the benefit of the Lender is required by the Lender, and without same, the Lender would not be willing to modify the Loan Documents as requested by Borrower on an individual basis on the terms set forth herein.

K. Borrower and Guarantor acknowledge and agree that they will be benefited by Lender’s agreeing to modify the Loan Documents for Borrower and the Affiliated Borrowers (as hereinafter defined).

L. A condition precedent to the Lender’s agreement to modify the Loan Documents is the execution and delivery by the Borrower and Guarantor of this Modification and the grant by Borrower of the “cross-default and “cross-collateralization” contained herein.

M. Pursuant to Section 5 of the Loan Agreement, Borrower is obligated to maintain a Debt Service Ratio of not less than 1.25:1.00. The Debt Service Ratio for the year ending December 31, 2005 was 1.15:1.00 (“2005 Covenant Violation”).

N. Pursuant to the terms and condition of the Loan Agreement, in the event of a violation of the Debt Service Ratio, the Borrower is obligated to make a principal payment in order to decrease the outstanding principal balance of the Loan so that the Debt Service Ratio will satisfy the debt Service Ratio covenant (“Resizing Obligation”). Notwithstanding the 2005 Covenant Violation, pursuant to the terms and conditions of this Modification, Lender has agreed to waive Borrower’s Resizing Obligation with respect to the 2005 Covenant Violation, upon the terms and conditions hereinafter set forth.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Modification as representations and warranties of the Borrower and Guarantors), (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. **Waiver of Resizing Obligation for 2005 Covenant Violation.** Borrower and Guarantor jointly and severally acknowledge and agree as follows:

(a) **Acknowledgment of 2005 Covenant Violation.** That as of December 31, 2005, Borrower failed to satisfy the Debt Service Ratio pursuant to the terms of the Loan Agreement and as a result, suffered the 2005 Covenant Violation.

UNOFFICIAL COPY

(b) Acknowledgment of Obligations. That as a result of the 2005 Covenant Violation, Borrower is required to reduce the outstanding principal balance of the Loan pursuant in order to cure the 2005 Covenant Violation.

(c) Acknowledgment that Obligations Continue in Full Force and Effect. That, notwithstanding the 2005 Covenant Violation, the Note and all other liabilities and obligations of Borrower and Guarantor to the Lender under the Note and all of the other Loan Documents shall remain in full force and effect, and shall not be released, impaired, diminished or in any other way modified or amended as a result of the execution and delivery of this Modification except as otherwise specifically provided herein.

(d) Waiver of Resizing Obligation. Borrower has requested that Lender waive the Resizing Obligation with respect to the 2005 Covenant Violation, and pursuant to this Modification, Lender has agreed to waive the Resizing Obligation with respect to the 2005 Covenant Violation. Except as and to the limited extent otherwise expressly provided herein with respect to the 2005 Covenant Violation, nothing in this Modification shall be construed as a waiver by the Lender of any promises, covenants, conditions or obligations of the Borrower under the Loan Documents or as a waiver by the Lender of any past, present or future Event of Default or past, present or future violation of the Debt Service Ratio.

(e) Release. Borrower and Guarantor each hereby acquit, and forever discharge the Lender and each and every past and present subsidiary, affiliate, stockholder, officer, director, agent, servant, employee, representative, and attorney of the Lender from any and all claims, causes of action, suits, debts, liens, obligations, liabilities, demands, losses, costs and expenses (including attorneys' fees) of any kind, character, or nature whatsoever, known or unknown, fixed or contingent, which the Borrower or Guarantor may have or claim to have now or which may hereafter arise out of or be connected with any act of commission or omission of the Lender existing or occurring prior to the date of this Modification or any instrument executed prior to the date of this Modification including, without limitation, any claims, liabilities or obligations arising with respect to the indebtedness evidenced by the Note or any of the other Loan Documents. The provisions of this Section 1 shall be binding upon the Borrower, Guarantor and their respective heirs, executors and administrators and shall inure to the benefit of the Lender, and its successors and assigns, and shall survive the termination of this Modification.

2. Principal and Interest. The principal amount of the Loan evidenced by the Second Restated Note, and all accrued interest thereon, shall be paid as follows:

(a) Commencing on May 1, 2006, and continuing on the first day of each month thereafter through and including the month in which the Maturity Date occurs, all accrued and unpaid interest on the principal balance of the Loan outstanding from time to time shall be due and payable.

UNOFFICIAL COPY

(b) The unpaid principal balance of the Second Restated Note, if not sooner paid or declared to be due in accordance with the terms of the Second Restated Note or the other Loan Documents, together with all accrued and unpaid interest thereon and any other amounts due and payable hereunder or under any of the Loan Documents shall be due and payable in full on the Maturity Date.

3. Modifications to the Mortgage.

(a) The paragraph on page two of the Mortgage commencing “ACCORDINGLY, Mortgagor, to secure . . .” and “TOGETHER with all buildings . . .” are each hereby amended and restated in their respective entireties to read as follows:

“The Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to the Mortgagee, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as the “Premises”), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

(a) The real estate located in the County of Cook, State of Illinois and legally described on Exhibit “A” attached hereto and made a part hereof (the “Real Estate”);

(b) All improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by the Mortgagor and located on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of the Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by the Mortgagor or on its behalf (the “Improvements”);

(c) All easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of the Mortgagor of, in and to the same;

(d) All rents, revenues, issues, profits, proceeds, income, royalties, Letter of Credit Rights (as defined in the Uniform Commercial Code of the State of Illinois (the “Code”) in

UNOFFICIAL COPY

effect from time to time), escrows, security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by the Mortgagor thereon, to be applied against the Indebtedness (as hereinafter defined); provided, however, that the Mortgagor, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

(e) All interest of the Mortgagor in all leases now or hereafter on the Premises, whether written or oral (each, a "Lease", and collectively, the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to the Mortgagor to collect the rentals under any such Lease;

(f) All fixtures and articles of personal property now or hereafter owned by the Mortgagor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, computer hardware and software used in the operation of the Premises, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by the Mortgagor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute Goods (as defined in the Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in the Mortgagee, as a Secured Party, and the Mortgagor, as Debtor, all in accordance with the Code;

(g) All of the Mortgagor's interests in General Intangibles, including Payment Intangibles and Software (each as defined in the Code) now owned or hereafter acquired and related to the Premises, including, without limitation, all of the Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which the Mortgagor is or may become a party and which relate to the Premises; (ii) all obligations and indebtedness owed to the Mortgagor thereunder; (iii) all intellectual property related to the Premises; and (iv) all choses in action and causes of action relating to the Premises;

UNOFFICIAL COPY

(h) All of the Mortgagor's accounts now owned or hereafter created or acquired as relate to the Premises and/or the businesses and operations conducted thereon, including, without limitation, all of the following now owned or hereafter created or acquired by the Mortgagor: (i) Accounts (as defined in the Code), contract rights book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Mortgagor); (v) Securities, Investment Property, Financial Assets and Securities Entitlements (each as defined in the Code); (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and (vii) all warranties, guarantees, permits and licenses in favor of the Mortgagor with respect to the Premises; and

(i) All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges, prepayment premium, if any, exit fee, if any, interest rate swap or hedge expenses (if any), reimbursement obligations, fees and expenses for letters of credit issued by the Mortgagee for the benefit of the Mortgagor, if any, and other indebtedness evidenced by or owing under the Note, any of the other Loan Documents, and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the obligations and liabilities of the Mortgagor to the Mortgagee under and pursuant to any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, executed by and between the Mortgagor and the Mortgagee from time to time (collectively, "Interest Rate Agreements"); (iii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Mortgagor or any other obligor to or benefiting the Mortgagee which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; (iv) the reimbursement to the Mortgagee of any and all sums incurred, expended or advanced by the Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, any of the other Loan Documents or any Interest Rate Agreements or any application for letters of credit and master letter of credit agreement, with interest thereon as

UNOFFICIAL COPY

provided herein or therein; and (v) the payment in full of the Associated Indebtedness (as hereinafter defined) (collectively, the "Indebtedness")."

(b) Section 11 of the Mortgage is hereby amended by (i) deleting "; or" at the end of subparagraph (a) and replacing therefore ";"; (ii) deleting the period at the end of subparagraph (b) and replacing therefore "; or"; and (iii) inserting a new subparagraph (c), along with the Schedule 1 referred to in subparagraph (c) as an attachment and incorporation into the Mortgage, as follows:

"(c) Any Event of Default under any of the promissory notes evidencing a loan (for purposes hereof "Associated Indebtedness") made by Mortgagee to the borrowers identified on Schedule 1 attached hereto and made a part hereof ("Associated Borrowers") or the loan documents securing the Associated Indebtedness.

4. **Attachment to Second Restated Note.** The Lender may and prior to any transfer by it of the Second Restated Note shall, attach a copy of this Modification to the Second Restated Note and place an endorsement on the Second Restated Note making reference to the fact that such attachment has been made.

5. **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 Modification, 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.

UNOFFICIAL COPY

(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 Modification and to perform the Loan Documents as modified herein. The execution and delivery of this Modification 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 Modification has been duly executed and delivered on behalf of Borrower.

6. **Reaffirmation of Guaranty and Environmental Indemnity.** Guarantor ratifies and affirms the Guaranty and the Environmental Indemnity and agrees that each of the Guaranty and Environmental Indemnity is in full force and effect following the execution and delivery of this Modification. The representations and warranties of Guarantor in the Guaranty and the Environmental Indemnity are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. Each of the Guaranty and Environmental Indemnity continues to be valid and binding obligations 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 or in the Environmental Indemnity, as the case may be.

7. **Conditions Precedent.** The agreement of Lender to amend the Note and Loan Documents is subject to the following conditions precedent:

(a) Lender shall have received this Modification duly executed by an authorized individual for each entity that is a party hereto.

(b) Lender shall have received resolutions of Borrower and its manager approving the execution of this Modification in form and content acceptable to Lender.

(c) **Title Policy.** Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 007822986 (the "Title Policy"), as of the date this Modification is recorded, reflecting the recording of this Modification and 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.

(d) **Fees and Expenses.** Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Modification, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

(e) Lender shall have received such other documents as may be reasonably requested by Lender or its counsel.

8. **Miscellaneous.**

UNOFFICIAL COPY

(a) This Modification shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Modification 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 Modification, 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 Modification. Each of the parties to this Modification represents that it has been advised by its respective counsel of the legal and practical effect of this Modification, and recognizes that it is executing and delivering this Modification, 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 Modification, 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 Modification 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 priority 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 Modification, 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 Modification. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Modification 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

UNOFFICIAL COPY

or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Modification may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Modification.

(h) Time is of the essence of each of Borrower's obligations under this Modification.

(i) Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act The Lender hereby notifies the 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 the Lender's policies and practices, the Lender is required to obtain, verify and record certain information and documentation that identifies the Borrower, which information includes the name and address of the Borrower and such other information that will allow the Lender to identify the Borrower in accordance with the Act. In addition, the Borrower shall (a) ensure that no person who owns a controlling interest in or otherwise controls the Borrower or any subsidiary of the 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.

(Signature Page Follows)

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Modification dated as of the day and year first above written.

LENDER:

LASALLE BANK NATIONAL ASSOCIATION

By: Peter Paolilli

Name: Peter A. Paolilli

Title: Vice President

BORROWER:

Dempster/Oak II, LLC an Illinois limited liability company

By: Beal Holdings, LLC, a
Delaware limited liability company,
its manager

By: _____

Name: William B. Silverstein

Title: Manager

GUARANTOR:

William B. Silverstein

Thomas B. Silverstein

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Modification dated as of the day and year first above written.

LENDER:

LASALLE BANK NATIONAL ASSOCIATION

By: _____

Name: Pate A. Paolilli

Title: Vice President

BORROWER:

Dempster/Oak II, LLC an Illinois limited liability company

By: Beal Holdings, LLC, a Delaware limited liability company, its manager

By: _____

Name: William B. Silverstein

Title: Manager

GUARANTOR:



William B. Silverstein



Thomas B. Silverstein

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

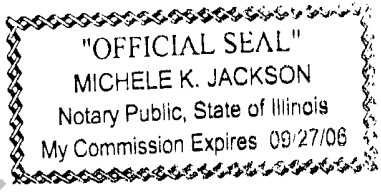
I Michele Jackson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Peter Paolilli, Vice President of LaSalle Bank National Association, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22 day of May, 2004

Michele Jackson

Notary Public

My Commission Expires: 9/27/06



STATE OF ILLINOIS)
)
) SS
COUNTY OF _____)

I _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that William B. Silverstein, individually and as of Manager of Beal Holdings, LLC, a Delaware limited liability company, manager of Dempster/Oak II, LLC, is 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 acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

I Brittany Hillwertz a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Peter Paolilli, Vice President of LaSalle Bank National Association, is 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 acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 8th day of May, 2006

Brittany Hillwertz
Notary Public

My Commission Expires: 11-12-07



STATE OF ILLINOIS)
)
) SS
COUNTY OF _____)

I Brittany Hillwertz a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that William B. Silverstein, individually and as of Manager of Beal Holdings, LLC, a Delaware limited liability company, manager of Dempster/Oak II, LLC, is 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 acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 8th day of May, 2006

Brittany Hillwertz
Notary Public

My Commission Expires: 11-12-07



UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
 COUNTY OF _____)

I Brittany Hillwertz a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Thomas B. Silverstein, is 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 acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 8th day of May, 2006

Brittany Hillwertz
 Notary Public

My Commission Expires: 11-12-07



UNOFFICIAL COPY

EXHIBIT A

THE PROPERTY

THE SOUTH 111 FEET OF THE NORTH 311 FEET OF THE WEST 200 FEET OF BLOCK 42 IN EVANSTON IN SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address of Premises: 1313-1321 Oak Street, Evanston, Illinois 60201

Permanent Tax Index Number: 11-18-327-003-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY

SCHEDULE 1

Associated Indebtedness

Associated Borrower	Date of Note Evidencing Associated Indebtedness from Lender/ Mortgagee to Associated Borrower	Original Principal Amount of Associated Indebtedness made by Lender/Mortgagee to Associated Borrower
Wellington Building II LLC	October 1, 2003	1,377,840.00
Waveland Building LLC	October 1, 2003	5,597,360.00
Pine Grove Building LLC	October 1, 2003	3,096,685.00
Oakdale Building II LLC	October 1, 2003	1,8858,234.00
Byron LLC	October 1, 2003	1,750,080.00
Bosworth LLC	October 1, 2003	625,446.00
Dearborn Three LLC	March 14, 2003	2,911,000.00
Cornelia II LLC	April 14, 2003	4,080,000.00
New Mildred LLC	April 14, 2003	7,500,000.00
LaSalle LLC	March 14, 2003	4,675,000.00
Wolfram, LLC	October 1, 2003	2,399,879.00