

UNOFFICIAL COPY



Doc#: 0627002241 Fee: \$44.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/27/2008 02:10 PM Pg: 1 of 11

This space reserved for Recorder's use only

SECOND MODIFICATION OF LOAN DOCUMENTS

THIS SECOND MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is dated as of August 31, 2006, but is effective as of August 7, 2006 by and among **WILLE ROAD LLC**, an Illinois limited liability company ("Borrower"), **ML REALTY PARTNERS LLC**, a Delaware limited liability company ("Guarantor") and **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Nineteen Million Eight Hundred Fifty Thousand and No/100 Dollars (\$19,850,000.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of August 7, 2003 between Borrower and Lender, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated August 7, 2003, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

This document prepared by and after recording return to:

C. Elizabeth Darke, Esq.
Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

Permanent Index Number:

See Exhibit B attached hereto

Address of Property:

55-257 West Wille Road,
Des Plaines, Illinois

116C

Box 400-CTCC

7886990-1, PLS, DI 1061

UNOFFICIAL COPY

B. The Loan is secured by (i) that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated August 7, 2003 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on August 19, 2003, as Document No. 0323142291 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A attached thereto ("Property"); (ii) that certain Assignment of Rents and Leases dated August 7, 2003, from Borrower to Lender and recorded in the Recorder's Office on August 19, 2003, as Document No. 0323142292 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated August 7, 2003 from Borrower and Guarantor to Lender (the "Indemnity Agreement"); (iv) that certain Put Agreement dated August 7, 2003 by and among Borrower, Lender and Guarantor (the "Put Agreement"); and (v) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the Put Agreement, the Guaranty (as hereinafter defined) and the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty of Completion and Non-Recourse Carve Outs dated August 7, 2003 from Guarantor to Lender (the "Guaranty").

D. Lender and Borrower entered into that certain Modification of Loan Documents dated January 4, 2005 recorded with the Recorder's Office on February 24, 2005 as Document No. 0505533103, pursuant to which Lender agreed (among other things) to increase the stated principal amount of the Note from \$19,850,000.00 to \$22,525,000.00.

E. Pursuant to that certain Interest Assignment and Assumption Agreement dated July 31, 2006 (the "Interest Assignment Agreement"), Guarantor acquired a fifty percent (50%) share of the membership interests of Borrower.

F. Borrower has requested that Lender amend the Loan Documents in order to, among other things, (i) extend the Maturity Date of the Loan and (ii) release the Release Parcel (as hereinafter defined) from the lien of the Mortgage and the other Loan Documents and subject to the terms and conditions of this Agreement, Lender is willing to do so.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date**. The Maturity Date of the Note is hereby extended from August 7, 2006 to November 7, 2006. Any reference in the Note, the Mortgage, the Loan Agreement or any other Loan Document to the Maturity Date shall mean November 7, 2006.

UNOFFICIAL COPY

2. **Partial Release of Mortgage.** Lender hereby releases that portion of the Property legally described on Exhibit A attached hereto (the "Release Parcel") from the lien of the Mortgage, the Assignment of Leases, and the other Loan Documents. Any references in the Mortgage, the Assignment of Leases, or any of the other Loan Documents to the "Premises", the "Real Estate", or the "Property," as the case may be, shall hereinafter mean the remaining property legally described on Exhibit B attached hereto (the "Remaining Parcel").

3. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

4. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's Title Insurance Policy No. 1401 7886990-1 (the "Title Policy"), as of the date this Agreement is recorded: (i) reflecting the recording of this Agreement, (ii) amending the legal description of the real estate described therein to exclude the Release Parcel, and (iii) insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

UNOFFICIAL COPY

5. **Reaffirmation of Guaranty and Put Agreement.** Guarantor hereby ratifies and affirms the Guaranty and Put Agreement and agrees that the terms of the Guaranty and Put Agreement are in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty and Put Agreement are, as of the date hereof, true and correct and does not know of any default thereunder. The Guaranty and Put Agreement continue to be the valid and binding obligations of Guarantor, enforceable in accordance with their 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 and Put Agreement.

6. **Miscellaneous.**

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

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

UNOFFICIAL COPY

(f) Any references to the "Note", the "Mortgage", the "Loan Agreement" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage, the Loan Agreement and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

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

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

7. **Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act.** Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Lender to identify Borrower in accordance with the Act. In addition, Borrower shall (a) ensure that no person who owns a controlling interest in or otherwise controls Borrower or any subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

UNOFFICIAL COPY

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

LENDER:

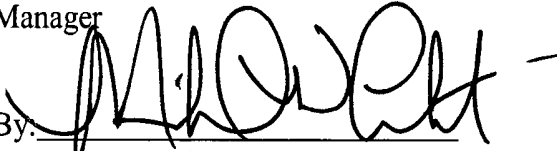
LASALLE BANK NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

BORROWER:

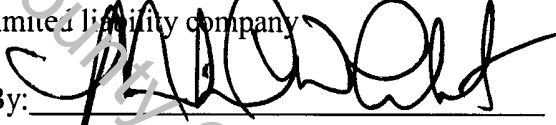
WILLE ROAD LLC, an Illinois limited liability company

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

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

GUARANTOR:

ML REALTY PARTNERS LLC, a Delaware limited liability company


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

UNOFFICIAL COPY

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

LENDER:

LASALLE BANK NATIONAL ASSOCIATION

By: 
Name: MARIA K AZEVEDO
Title: FRP

BORROWER:

WILLE ROAD LLC, an Illinois limited liability company

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

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

GUARANTOR:

ML REALTY PARTNERS LLC, a Delaware limited liability company

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

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

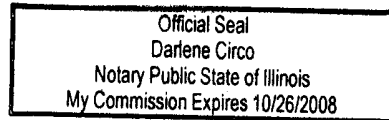
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **Michael W. Luecht**, the **Chief Executive Officer** of **ML Realty Partners LLC**, a Delaware limited liability company, the sole **Manager** of **WILLE ROAD LLC**, an Illinois limited liability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

GIVEN under my hand and notarial seal, this 7th day of September, 2006.

Darlene Circo

NOTARY PUBLIC

(SEAL)



STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

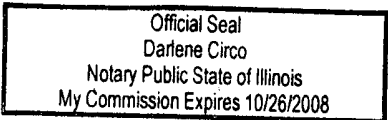
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **Michael W. Luecht**, the **Chief Executive Officer** of **ML Realty Partners LLC**, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed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

GIVEN under my hand and notarial seal, this 7th day of September, 2006.

Darlene Circo

NOTARY PUBLIC

(SEAL)

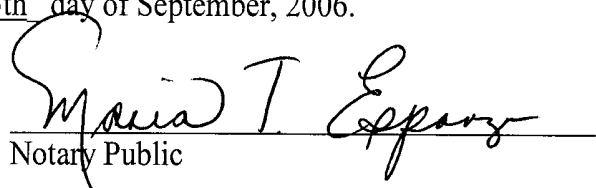


UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF COOK)

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

WITNESS my hand and seal, this 5th day of September, 2006.



Notary Public

My Commission Expires: 4/29/07



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF RELEASE PARCEL

Lot 1 in Harry Wille's subdivision of the west 400.0 feet of the east 832.0 feet of the north 200.0 feet of the southeast quarter of the northeast quarter of section 25, township 41 north, range 11, east of the third principal meridian, according to the plat thereof filed on July 21, 1958 as LR18075616, in Cook County, Illinois.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

LEGAL DESCRIPTION OF REMAINING PARCEL

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

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

EXCLUDING THE FOLLOWING:

Lot 1 in Harry Wille's subdivision of the west 400.0 feet of the east 832.0 feet of the north 200.0 feet of the southeast quarter of the northeast quarter of section 25, township 41 north, range 11, east of the third principal meridian, according to the plat thereof filed on July 21, 1958 as LR1807516 in Cook County, Illinois.

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

P.I.N.: 08-25-202-019