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Doc#: 0701618027 Fee: \$42.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/16/2007 11:50 AM Pg: 1 of 10

(Above Space for Recorder's Use)

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PAPP

**THIRD MODIFICATION OF NOTE, MORTGAGE
AND OTHER LOAN DOCUMENTS**

THIS INSTRUMENT WAS
PREPARED BY AND
AFTER RECORDING
RETURN TO:

Joseph C. Huntzicker
Fox, Hefter, Swibel, Levin & Carroll
321 North Clark Street, Suite 3300
Chicago, Illinois 60610

Property Index
Numbers: 17-03-204-041-0000
17-03-207-018-0000

Property Address:
50 East Oak
59-65 East Oak
Chicago, IL

Property of Cook County Clerk's Office



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THIRD MODIFICATION OF NOTE, MORTGAGE AND OTHER LOAN DOCUMENTS

This **Third Modification of Note, Mortgage and Other Loan Documents** (this "**Third Modification**") is made as of the 5th day of December, 2006 by and among **CHICAGO TITLE LAND TRUST COMPANY**, as Successor Trustee to LaSalle Bank National Association, as Successor Trustee to American National Bank and Trust Company of Chicago, not personally, but as Trustee under Trust Agreement dated August 11, 1969 and known as Trust No. 28683 ("Trust No. 1"), **CHICAGO TITLE LAND TRUST COMPANY**, as Successor Trustee to LaSalle Bank National Association, as Successor Trustee to American National Bank and Trust Company of Chicago, not personally, but as Trustee under Trust Agreement dated November 9, 1979 and known as Trust No. 57-25 ("Trust No. 2"; Trust No. 1 and Trust No. 2 are hereinafter collectively referred to as "Trustee") and **DONALD GELLER** ("**Beneficiary**"; and together with Trustee, "**Mortgagor**") to and for the benefit of **BANK OF AMERICA, NATIONAL ASSOCIATION**, successor by merger to Bank of America National Trust and Savings Association ("**Mortgagee**").

RECITALS

A. Mortgagee and Mortgagor entered into that certain Mortgage Note Line of Credit Agreement dated as of November 26, 1997 (the "**Original Line of Credit Agreement**") pursuant to which Mortgagee made a revolving loan to Mortgagor in the principal amount of EIGHT MILLION DOLLARS (\$8,000,000) (the "**Loan**").

B. The Loan was evidenced by a Line of Credit Mortgage Note made by Mortgagor payable to the order of Mortgagee in the original principal amount of EIGHT MILLION DOLLARS (\$8,000,000) (the "**Original Note**").

C. In connection with the Loan, Mortgagor executed and delivered to Mortgagee the following security documents, each dated as of November 26, 1997: (i) a Mortgage, Assignment of Leases and Rents, and Security Agreement (the "**Mortgage**") encumbering the land described in Exhibit A attached hereto and made a part hereof, and all improvements hereon, which Mortgage was recorded with the Office of the Recorder of Deeds of Cook County (the "**Recorder**") as Document No. 97-913325; (ii) a Collateral Assignment of Leases and Rents (the "**Assignment of Leases**"), which Assignment of Leases was recorded with the Recorder as Document No. 97-913326; (iii) an Environmental Indemnity Agreement; (iv) a Collateral Assignment of Beneficial Interest in Land Trust; and (v) a Borrower's Certificate, which documents are collectively referred to herein as the "**Original Security Documents**". The Original Note, the Original Line of Credit Agreement and the Original Security Documents are collectively referred to herein as the "**Original Loan Documents**".

D. The Original Loan Documents were modified by that certain Modification of Note, Mortgage and Other Loan Documents dated as of November 21, 2000 and recorded with the Recorder as Document No. 998606 (the "**First Modification**") to extend the maturity date of the Loan (the "**Maturity Date**") from November 25, 2000 to December 5, 2003, subject to the terms and

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conditions set forth in the First Modification.

E. The Original Loan Documents were further modified by that certain Second Modification of Note, Mortgage and Other Loan Documents dated as of November ____, 2003 and recorded with the Recorder as Document No. 0335142220 (the "**Second Modification**") to, among other things, extend the Maturity Date from December 5, 2003 to December 5, 2006, subject to the terms and conditions set forth in the Second Modification.

F. Mortgagee has agreed to further modify the Original Loan Documents to, among other things, extend the Maturity Date to December 5, 2011, subject to the terms and conditions set forth herein.

NOW THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) in hand paid, the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Incorporation of Recitals.** The aforesaid recitals are hereby incorporated into this Third Modification by reference as if fully set forth in this Section 1. Wherever the terms and conditions of this Third Modification conflict with the terms and conditions of the Original Loan Documents as modified by the First Modification and the Second Modification, the terms and conditions of this Third Modification shall control. In all other respects, the parties do hereby ratify and declare the terms and conditions of the Original Loan Documents, as modified by the First Modification and the Second Modification, to be in full force and effect.

2. **Amendment to Original Note.** As of the date hereof, the definition of Maturity Date shall be "December 5, 2011".

3. **Amendment to Mortgage.** As of the date hereof, all references to the date for final payment under the Note shall mean "December 5, 2011".

4. **Amendment to Original Line of Credit Agreement.**

(a) As of the date hereof, the following definition of "Commitment Amount" is inserted into Section 1 in appropriate alphabetical order:

"Commitment Amount" means Eight Million Dollars (\$8,000,000), subject to reduction in accordance with Section 5.4 hereof.

(b) As of the date hereof, the following definition of "Debt Service" is inserted into Section 1 in appropriate alphabetical order:

"Debt Service" means for any period the total expense during such period for payments of principal, interest and expenses in respect of the Loan and any other

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Debt relating to the Property. In computing Debt Service, (i) the interest rate shall be deemed to be the greater of (A) the actual rate of interest payable under the Note, (B) 6.9% per annum or (C) the then current ten (10) year treasury yield from the date of computation through and including the Termination Date plus 1.75%, (ii) amortization of principal shall be on the basis of thirty (30) years and (iii) the principal amount of the Loan shall be deemed to be the full Commitment Amount irrespective of the actual principal balance of the Loan then outstanding.

(c) As of the date hereof, the following definition of "Debt Service Coverage Ratio" is inserted into Section 1 in appropriate alphabetical order:

"Debt Service Coverage Ratio" means for any period, the ratio of (a) the actual net operating income from the Property over (b) total Debt Service during such period. The Debt Service Coverage Ratio shall be (i) computed on a trailing twelve month basis and (ii) determined in accordance with GAAP.

(d) As of the date hereof, the definition of Termination Date shall be "December 5, 2011".

(e) As of the date hereof, the Caryn Geller Loan referred to in Section 2.4 shall be deemed to mean the Caryn Geller Loan as modified by that certain Modification of Note, Line of Credit Agreement and Reaffirmation of Guaranty dated as of November 21, 2000, as further modified by that certain Second Modification of Note, Line of Credit Agreement and Reaffirmation of Guaranty dated as of November ____, 2003, and as further modified by that certain Third Modification of Note and Line of Credit Agreement and Reaffirmation of Guaranty dated as of December 5, 2006.

(f) As of the date hereof, the reference to Maturity Date in Section 3 shall mean December 5, 2011.

(g) As of the date hereof, the following Section 5.4 is inserted immediately following Section 5.3:

5.4 Debt Service Coverage Ratio; Reduction of Commitment Amount. (a) In the event that the Property fails to achieve a Debt Service Coverage Ratio of not less than 1.20 to 1.00 as of December 5, 2009, then on the first business day following December 5, 2009 the Commitment Amount shall be automatically and permanently reduced to an amount such that the Property shall achieve a Debt Service Coverage Ratio of not less than 1.20 to 1.00 as of the first business day following December 5, 2009 (the Commitment Amount as so reduced, the "Reduced Commitment Amount").

(b) In the event that the Reduced Commitment Amount exceeds the then outstanding balance of the Loan, then on the first business day following December 5, 2009 the Borrower shall pay to the Bank in immediately available funds an amount of principal such that the outstanding principal balance of the Loan shall be less than

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or equal to the Reduced Commitment Amount.

(c) In the event that Commitment Amount is reduced in accordance with Section 5.4(a) hereof, then (i) any and all references to "Eight Million and 00/100 Dollars" and "\$8,000,000" shall be replaced with a reference to the "Reduced Commitment Amount" and (ii) the reference in Section 2.4 to "Seven Million Two Hundred Fifty Thousand and 00/100 Dollars (\$7,250,000)" shall be replaced with a reference to "the Reduced Commitment Amount less \$750,000".

5. **References to Original Note.** From and after the date hereof (i) the Original Security Documents shall be deemed to secure the Original Note as modified by the First Modification and the Second Modification and as further modified by this Third Modification, (ii) any and all references in the Original Security Documents to the Note shall be deemed to refer to the Original Note as modified by the First Modification and the Second Modification and as further modified by this Third Modification, and (iii) any and all references in the Original Line of Credit Agreement to the Note shall be deemed to refer to the Original Note as modified by the First Modification and the Second Modification and as further modified by this Third Modification.

6. **References to Security Documents.** Any and all references to the Original Loan Documents shall from and after the date hereof be deemed to refer to such documents as modified by the First Modification and the Second Modification and as further modified by this Third Modification.

7. **Reaffirmation of Representations and Warranties.** Mortgagor hereby reaffirms as true and correct in all respects, as of the date hereof, any and all representations and warranties contained in the Original Line of Credit Agreement and the Original Security Documents.

8. **Reaffirmation of Covenants.** Mortgagor hereby reaffirms and agrees to perform all of the terms, covenants, conditions and obligations applicable to such parties as set forth in the Original Loan Documents, as modified by the First Modification and the Second Modification and as further modified by this Third Modification.

9. **Trustee Exculpation.** This Third Modification is executed by Chicago Title Land Trust Company, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as Trustee. The Trustee hereby personally warrants that it possess full power and authority to execute and deliver this Third Modification. It is expressly understood and agreed that nothing contained in this Third Modification shall be construed as creating any liability on the Trustee personally to pay or perform the obligations evidenced or secured by this Third Modification or any interest that may accrue thereon or to perform any covenant, express or implied, contained herein, all such personal liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder.

[signature page follows]

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IN WITNESS WHEREOF, the parties hereto have executed this Third Modification as of the date first above written.

TRUSTEE:

**CHICAGO TITLE LAND TRUST COMPANY, as
Successor Trustee under Trust Agreement dated
August 11, 1969 and known as Trust No. 28683
and not personally**

Attest: Attestation not required By: Nancy A. Carlson
Its: pursuant to corporate by-laws Its: _____

TRUSTEE:

**CHICAGO TITLE LAND TRUST COMPANY, as
Successor Trustee under Trust Agreement dated
November 9, 1979 and known as Trust No. 47325
and not personally**

Attest: Attestation not required By: Nancy A. Carlson
Its: pursuant to corporate by-laws Its: _____

BENEFICIARY:

Donald Geller
Donald Geller

MORTGAGEE:

**BANK OF AMERICA NATIONAL
ASSOCIATION,
a national banking association**

By: _____
Its: Vice President

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IN WITNESS WHEREOF, the parties hereto have executed this Third Modification as of the date first above written.

TRUSTEE:

**CHICAGO TITLE LAND TRUST COMPANY, as
Successor Trustee under Trust Agreement dated
August 11, 1969 and known as Trust No. 28683**

Attest: _____
Its: _____

By: _____
Its: _____

TRUSTEE:

**CHICAGO TITLE LAND TRUST COMPANY, as
Successor Trustee under Trust Agreement dated
November 9, 1979 and known as Trust No. 47325**

Attest: _____
Its: _____

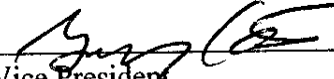
By: _____
Its: _____

BENEFICIARY:

Donald Geller

MORTGAGEE:

**BANK OF AMERICA, NATIONAL
ASSOCIATION,
a national banking association**

By: 
Its: Vice President

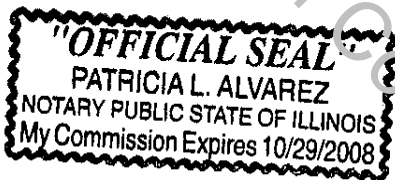
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Patricia L. Alvarez, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Nancy Carter and _____, trust officer and _____, respectively, of **CHICAGO TITLE LAND TRUST COMPANY**, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such trust officer and _____, appeared before me this day in person and acknowledged that they signed and delivered said instrument as such officers of said company, as their own free and voluntary act and as the free and voluntary act of said association, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this and January, 2007 day of ~~December~~, 2006.

Patricia L. Alvarez
NOTARY PUBLIC



My Commission Expires: 10/29/08

STATE OF IL)
) SS.
COUNTY OF Cook)

I, Jeanne M. Sok, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **DONALD GELLER**, 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 29 day of December, 2006.

Jeanne M. Sok
NOTARY PUBLIC

My Commission Expires: 8/23/08



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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Nina Tai, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gary Katunas of **BANK OF AMERICA, NATIONAL ASSOCIATION**, a national banking association, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior VP, appeared before me this day in person and acknowledged that he signed and delivered said instrument as such officer of said corporation, as his own free and voluntary act and as the free and voluntary act of the corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28 day of December, 2006.



Nina Tai

NOTARY PUBLIC

My Commission Expires: _____

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EXHIBIT A

Legal Description

PARCEL 1:

LOT 1 IN LAWRENCE'S SUBDIVISION OF PART OF LOT 7 IN THE SUBDIVISION OF THE NORTH 1/2 OF BLOCK 8 IN THE CANAL TRUSTEES' SUBDIVISION OF THE SOUTH FRACTIONAL HALF OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF BLOCK 8 IN CANAL TRUSTEES' SUBDIVISION AFORESAID DESCRIBED AS COMMENCING AT A POINT ON THE NORTH LINE OF SAID BLOCK, 340.2 FEET EAST OF THE NORTHWEST CORNER; THENCE EAST ON SAID LINE TO THE NORTHWEST CORNER OF LOT 1 IN LAWRENCE'S SUBDIVISION AFORESAID; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT TO THE SOUTHWEST CORNER THEREOF; THENCE WEST 33 FEET 9 5/8 INCHES; THENCE NORTHERLY PARALLEL TO THE WEST LINE OF LOT 1 TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 11 (EXCEPT THE NORTH 8 FEET FOR ALLEY) OF COLLINS SUBDIVISION IN THE SOUTH 1/2 OF BLOCK 7 IN CANAL TRUSTEES' SUBDIVISION OF THE SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINS: 17-03-207-018-0000 (as to Parcels 1 and 2)
17-03-204-041-0000 (as to Parcel 3)