



Doc#: 0712934084 Fee: \$48.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 05/09/2007 01:15 PM Pg: 1 of 13

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DR 281617
10F1 DEC

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of April 24, 2007, by and among DELAWARE III, LLC, an Illinois limited liability company ("Borrower"), DONAL BARRY, SR., DONAL P. BARRY DECLARATION OF TRUST DATED JUNE 27, 2000, DONAL BARRY, JR., DONAL P. BARRY, JR. DECLARATION OF TRUST DATED MAY 29, 2002, SEAN T. BARRY, SEAN T. BARRY TRUST DATED JANUARY 13, 2000, JAMES PURCELL, JAMES W. PURCELL TRUST DATED DECEMBER 8, 2004, MARGARET H. BARRY, AND MARGARET H. BARRY DECLARATION OF TRUST DATED JUNE 27, 2000 (collectively, the "Guarantor"), and LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a loan (the "Loan") to Borrower in the principal amount of \$13,850,000.00, as evidenced by a Promissory Note dated December 22, 2006, in the principal amount of the Loan made payable by Borrower to the order of Lender (as amended, the "Note"). The Loan is further governed by a Loan Agreement dated December 22, 2006 between Borrower and Lender (as amended, the "Loan Agreement").

B. The Loan is secured by (i) that certain Construction Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing from Borrower to Lender dated December 22, 2006 and recorded on December 29, 2006 as Document No. 0636341128 with the Recorder of Deeds of Cook County, Illinois (the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto, (ii) that certain

This document prepared by and after recording return to:

Heather K. Aeschleman
Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

Permanent Index Numbers:

17-03-221-002-0000

Address of Property:

211 East Delaware
Chicago, Illinois

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Assignment of Rents and Leases from Borrower to Lender dated December 22, 2006 and recorded on December 29, 2006 as Document No. 0636341129 with the Recorder of Deeds of Cook County, Illinois ("Assignment of Leases"); and (iii) certain other loan documents (the Note, the Loan Agreement, the Mortgage, the Assignment of Leases 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 Payment and Completion dated as of December 22, 2006, made by Guarantor in favor of Lender (as amended, the "Guaranty").

D. Borrower desires to amend the Loan Documents in order to increase the amount of the Loan to \$16,000,000.00, and Lender is willing to do so on the terms and conditions set forth below in this Agreement.

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. **Increase in Loan Amount.** The principal amount of the Note is hereby increased by \$2,150,000.00, from \$13,850,000.00 to \$16,000,000.00 (the "Additional Proceeds"). The Loan and the Additional Proceeds are hereinafter referred to as the "Amended Loan". Any reference to the "Loan", the "Loan Amount," the "Project," or "\$13,850,000.00" in the Note or the other Loan Documents shall hereafter mean \$16,000,000.00. Any references to the maximum indebtedness secured by the Loan Documents shall be increased from \$27,700,000.00 to \$32,000,000.00.

2. **Budget.** Borrower agrees that the Additional Proceeds shall be disbursed in accordance with the terms of the Loan Agreement. The Project Budget attached as Exhibit B to the Loan Agreement is hereby replaced with the budget set forth below.

Sources	Total	Uses	Total
LBNA Loan	16,000,000	Purchase Price	13,230,000
Cash Equity	2,800,000	Total Hard Costs	4,569,747
		Legal	5,000
		Bank Closing Costs	16,000
		Title Fees	20,000
		Commitment Fee	79,750
		Interest Reserve	<u>879,503</u>
		Total Soft Costs	1,000,253
Total Sources	18,800,000	Total Uses	18,800,000

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3. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause First American Title Insurance Company to issue a new loan policy in the full amount of the Amended Loan, which insures the first priority of the lien of the Mortgage, subject only to the exceptions expressly agreed to by Lender.

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

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

(b) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, will 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.

(c) 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 or the Amended Loan from the date of the most recent financial statement received by Lender.

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

(e) 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.

5. **Amendment to and Reaffirmation of Guaranty.** The number "Three Million Four Hundred Sixty Thousand and 00/100 Dollars (\$3,460,000.00)" in Section 19 of the Guaranty is hereby replaced with the number "Four Million and 00/100 Dollars (\$4,000,000.00)". Other than in the preceding sentence, the terms of the Guaranty shall remain unchanged and in full force and effect. Guarantor ratifies and affirms the Guaranty and agree that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor knows of no default thereunder. The Guaranty, as amended, continues to be the valid and binding obligation 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.

6. **Expenses and Fee.** As a condition precedent to the agreements contained herein, Borrower shall pay: (i) a loan fee in the amount of \$10,750.00, and (ii) all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, any title charges, recording fees, appraisal fees and attorneys' fees and expenses.

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and expenses incurred by Lender in connection with this Agreement, including, without limitation, any title charges, recording fees, appraisal fees and attorneys' fees and expenses.

7. 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.

(f) Any references to the "Note", the "Loan Agreement," the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Loan Agreement, 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

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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 and Guarantor's obligations under this Agreement.

(i) Lender's entry into this Agreement shall not be deemed a waiver by Lender of any Event of Default or limit Lender's remedies as a result of any Event of Default.

(j) Capitalized terms not defined herein shall have the meanings ascribed to them in the Note.

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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: [Signature]
Name: [Signature]
Title: VP

BORROWER:

DELAWARE III, LLC, an Illinois limited liability company

By: **DELAWARE III MANAGEMENT SPE, INC.**, an Illinois corporation, its managing member

By: [Signature]
Donal P. Barry, Sr., President

GUARANTORS:

[Signature]
Name: Donal P. Barry, Sr., individually

DONAL P. BARRY DECLARATION OF TRUST DATED JUNE 27, 2000

By: [Signature]
Donal P. Barry, Trustee

[Signature]
Name: Donal P. Barry, Jr., individually

DONAL P. BARRY, JR. DECLARATION OF TRUST DATED MAY 29, 2002

By: [Signature]
Donal P. Barry, Jr., Trustee

[Signature]
Name: Sean T. Barry, individually

SEAN T. BARRY TRUST DATED JANUARY 13, 2000

By: [Signature]
Sean T. Barry, Trustee

[Signature]
Margaret H. Barry, individually

MARGARET H. BARRY DECLARATION OF TRUST DATED JUNE 27, 2000

By: [Signature]
Margaret H. Barry, Trustee

[Signature]
Name: James W. Purcell, individually

JAMES W. PURCELL TRUST DATED DECEMBER 8, 2004

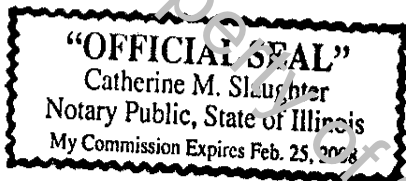
By: [Signature]
James W. Purcell, Trustee

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STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I, Catherine M. Slaughter, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jacob Noble, VP of **LASALLE BANK NATIONAL ASSOCIATION**, a 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 1st day of May, 2007.



Catherine M. Slaughter
Notary Public

My Commission Expires: 2/25/08

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, Jason Gnagy a Notary Public in and for said County, in the State aforesaid, do hereby certify that Donal P. Barry, Sr. the President of **DELAWARE III MANAGEMENT SPE, INC.**, an Illinois corporation, which is the Managing Member of **DELAWARE III, 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 president, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of both said companies, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 26 day of April, 2007.

[Signature]
NOTARY PUBLIC

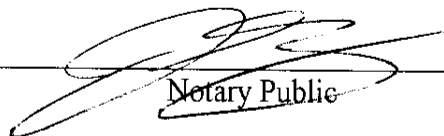


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STATE OF ILLINOIS)
) .ss
COUNTY OF _____)

I Jason Gnagy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Donal P. Barry, Sr.** 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 26 day of April, 2007.



Notary Public

My Commission Expires: 8/31/08



STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **DONAL P. BARRY**, the Trustee of the Donal P. Barry Declaration of Trust dated June 27, 2000, 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, sealed and delivered the said instrument as his free and voluntary act as such trustee, for the uses and purposes therein set forth.

Given under my hand and seal this 26 day of April, 2007.



Notary Public

Commission expires:

8/31/08

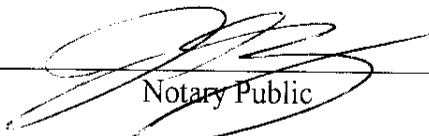


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STATE OF ILLINOIS)
) .ss
COUNTY OF _____)

I Jason Gnagy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Donal P. Barry, Jr.** 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 26 day of April, 2007.



Notary Public

My Commission Expires: 8/31/08



STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **DONAL P. BARRY, JR.**, the Trustee of the Donal P. Barry, Jr. Declaration of Trust dated May 28, 2002, 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, sealed and delivered the said instrument as his free and voluntary act as such trustee, for the uses and purposes therein set forth.

Given under my hand and seal this 26 day of April, 2007.



Notary Public

Commission expires:

8/31/08



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STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **SEAN T. BARRY**, the Trustee of the Sean T. Barry Trust dated January 13, 2000, 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, sealed and delivered the said instrument as his free and voluntary act as such trustee, for the uses and purposes therein set forth.

Given under my hand and seal this 26 day of April, 2007.

Notary Public

Commission expires:

8/31/08



STATE OF ILLINOIS)
).ss
COUNTY OF _____)

I Jason Gnagy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Sean T. Barry** 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 26 day of April, 2007.

Notary Public

My Commission Expires: 8/31/08

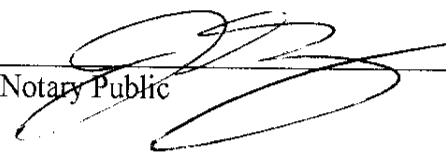


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STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **MARGARET H. BARRY**, the Trustee of the Margaret H. Barry Declaration of Trust dated June 27, 2000, 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 she signed, sealed and delivered the said instrument as her free and voluntary act as such trustee, for the uses and purposes therein set forth.

Given under my hand and seal this 26 day of April, 2007.



Notary Public

Commission expires:

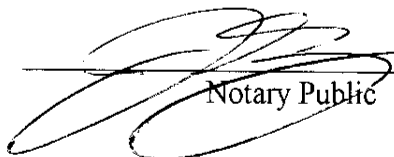
8/31/08



STATE OF ILLINOIS)
).ss
COUNTY OF _____)

I Jason Gnagy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Margaret H. Barry** 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 26 day of April, 2007.



Notary Public

My Commission Expires: 8/31/08

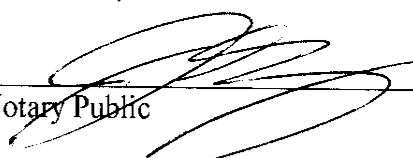


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STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **JAMES W. PURCELL**, the Trustee of the James W. Purcell Trust dated December 8, 2004, 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, sealed and delivered the said instrument as his free and voluntary act as such trustee, for the uses and purposes therein set forth.

Given under my hand and seal this 26 day of April, 2007.



Notary Public

Commission expires:

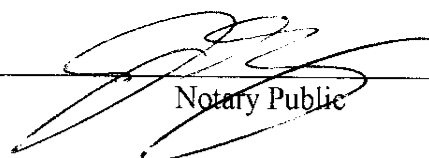
8/31/08



STATE OF ILLINOIS)
).ss
COUNTY OF _____)

I Jason Gnagy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **James W. Purcell** 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 26 day of April, 2007.



Notary Public

My Commission Expires: 8/31/08



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EXHIBIT A

THE PROPERTY

LOT 12 IN LAKE SHORE DRIVE ADDITION TO CHICAGO, A SUBDIVISION OF PART OF BLOCKS 14 AND 20 IN THE CANAL TRUSTEE'S SUBDIVISION OF THE SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office