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Doc#: 0722026085 Fee: \$44.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 08/08/2007 12:33 PM Pg: 1 of 11

ILLINOIS

Permanent Tax Index Number:

17-04-209-020-0000

PROPERTY ADDRESS:

1446 North Dearborn Street
Chicago, Illinois 60610

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FIFTH MODIFICATION OF LOAN DOCUMENTS

by

**DEARBORN THREE, 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

LAYNES #8094557-D1

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FIFTH MODIFICATION OF LOAN DOCUMENTS

THIS FIFTH MODIFICATION OF LOAN DOCUMENTS (this "Modification") is made as of the 18th day of July, 2007, by and among **DEARBORN THREE, LLC**, an Illinois limited liability company ("Borrower"), **William B. Silverstein and Thomas B. Silverstein**, (each a "Guarantor" and together "Guarantors") 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A. The Lender originally made a loan (the "Loan") to the Borrower, as evidenced by that certain Promissory Note dated March 14, 2003 in the original principal amount of Two Million Nine Hundred Eleven Thousand and 00/100 Dollars (\$2,911,000.00), executed by the Borrower and made payable to the order of the Lender, and maturing on April 1, 2008 (the "Note").

B. The Loan is secured by, among other things the following documents (together with the Note and any and all other documents evidencing or securing the Loan being collectively referred to herein as the "Loan Documents"): (i) Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of March 14, 2003, executed by the Borrower to and for the benefit of the Lender, and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on March 26, 2003 as Document Number 0030406421, and re-recorded on September 23, 2003 as Document Number 0326650286 (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 Leases and Rents dated as of March 14, 2003, executed by the Borrower to and for the benefit of the Lender, and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on March 26, 2003 as Document Number 0030406422 (the "Assignment of Rents"), which Assignment of Rents encumbers the Premises; (iii) Environmental Indemnity Agreement dated as of March 14, 2003, jointly and severally executed by the Guarantors to and for the benefit of the Lender (the "Environmental Indemnity"); and (iv) Guaranty of Payment dated as of March 14, 2003, jointly and severally executed by the Guarantors to and for the benefit of the Lender (the "Guaranty"). The Note, Mortgage, Assignment of Rents, Environmental Indemnity and Guaranty are collectively referred to, as amended from time to time, as the "Loan Documents."

C. Under and pursuant to that certain Modification of Loan Documents dated as of April 19, 2004, 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 July 23, 2004 as Document No. 0420511088 and re-recorded with the Office of the Recorder of Deeds of Cook County, Illinois on August 26, 2004 as Document No. 0423910016 (the "First Modification"), (i) the maturity date of the Loan was shortened from April 1, 2008 to April 19, 2007, (ii) the parties acknowledged that the Borrower had elected a fixed per annum rate of interest, and (iii) the repayment terms of the Note were modified.

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D. The Loan Documents were further modified (i) pursuant to that certain Second Modification of Loan Documents dated as of April 15, 2005, executed by and among the Borrower, the Guarantors and the Lender (the "Second Modification"), whereby the interest rate and the payment terms of the Note were modified and (ii) that certain Third Modification of Loan Documents dated as of May 1, 2006, executed by and among the Borrower, the Guarantors and the Lender ("Third Modification"), whereby, among other things, the payment terms of the Note were modified, and that certain Fourth Modification of Loan Documents dated as of April 19, 2007 executed by and among the Borrower, the Guarantors and the Lender (the "Fourth Modification; the First Modification, the Second Modification the Third Modification and the Fourth Modification together with the Loan Documents, being collectively referred to herein as the "Loan Documents"), whereby, among other things, the Maturity Date was extended and the interest rate was modified.

E. Borrower desires to further amend the Loan Documents in order to extend the maturity date of the Note, modify the interest rate, and for other purposes 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. **Maturity Date.** The Maturity Date of the Note is extended to July 18, 2008. Any reference in the Note, the Mortgage or any other Loan Document to the Maturity Date shall mean July 18, 2008.

2. **Interest.**

(a) **LIBOR Rate.** The terms set forth in the Fourth Modification whereby the Borrower agreed and acknowledged that the Interest Rate accruing on the principal balance of the Loan would be based on the LIBOR Rate, and the terms and conditions relating thereto shall be incorporated by reference as if fully set forth herein.

(b) **Interest Periods.** Notwithstanding the foregoing, the definition of Interest Periods set forth in the Fourth Modification shall be modified by (i) deleting the phrase "successive one month periods" and (ii) inserting in its place: "successive one, two or three month periods, as selected by the Borrower in its LIBOR Loan Request."

(c) **Number of LIBOR Loans.** The sentence in section 2(a)(i) of the Fourth Modification "Each LIBOR Loan will be in an amount not less than the entire outstanding

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principal balance of the Loan” is hereby deleted and replaced with the following “No more than four (4) separate LIBOR Loans may be outstanding at any time.”

3. **Principal Prepayments.** The portion of the Note bearing interest at the Prime Rate may be prepaid, either in whole or in part, without penalty or premium, at any time and from time to time upon fourteen (14) days prior notice to the Lender. The portion of the Note bearing interest at the LIBOR Rate may be prepaid only on the last day of an Interest Period; provided, however, that the Borrower may prepay a LIBOR Loan prior to such day so long as such prepayment is accompanied by a simultaneous payment of the Make Whole Costs, plus accrued interest on the LIBOR Loan being prepaid through the date of prepayment.

4. **Attachment to Note.** The Lender may and prior to any transfer by it of the Note shall, attach a copy of this Modification to the Note and place an endorsement on the 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, Guarantors 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 Modification and to perform the Loan Documents as modified herein. The execution and

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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 and Modification to Guaranty and Environmental Indemnity.**

Guarantors ratify and affirm 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 Guarantors in the Guaranty and the Environmental Indemnity are, as of the date hereof, true and correct and Guarantors do not know of any default thereunder. Each of the Guaranty and Environmental Indemnity continues to be valid and binding obligations of Guarantors, enforceable in accordance with its terms and Guarantors have 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. Notwithstanding the foregoing, Section 18 of the Guaranty is hereby amended by (i) deleting the numerical reference, "One Million Four Hundred Fifty-Five Thousand Five Hundred and no/100 Dollars (\$1,455,500)" and (ii) replacing therewith the following, "One Million Four Hundred Thirty-One Thousand Four Hundred Forty and 91/100 Dollars (1,431,440.91)."

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. 008094557 (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) **Extension Fee.** Borrower shall pay to the Lender a non-refundable fee in the amount of Seven Thousand One Hundred Fifty-Seven and 20/100 Dollars (\$7,157.20), which shall be due and payable in full as a condition precedent to the Lender's agreement to extend the Maturity Date as provided for herein.

(e) **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.

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

8. Miscellaneous.

(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 Guarantors merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantors and Lender have contributed substantially and materially to the preparation of this Modification, and Borrower, Guarantors 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 Guarantors nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantors 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, Guarantors 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

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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 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.

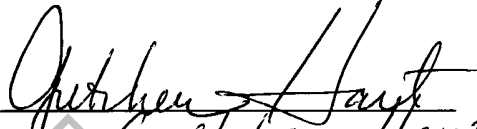
(Signature Page Follows)

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

LENDER:

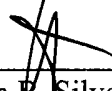
LASALLE BANK NATIONAL ASSOCIATION

By: 
Name: Gretchen Hart
Title: Vice President

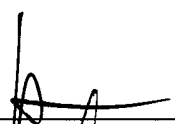
BORROWER:


DEARBORN THREE, LLC an Illinois limited liability company

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

By: 
Name: William B. Silverstein
Title: Manager

GUARANTORS:


William B. Silverstein


Thomas B. Silverstein

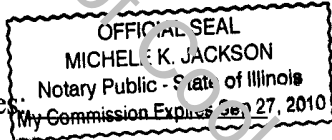
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I Michelle Jackson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gretchen Hart, the 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 31 day of July, 2007.

Michelle Jackson
Notary Public



My Commission Expires:

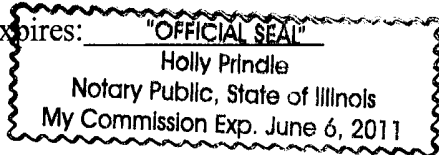
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I H. Prindle, 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 DEARBORN THREE, 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 26th day of July, 2007.

H. Prindle
Notary Public

My Commission Expires:

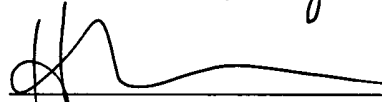


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STATE OF ILLINOIS)
) SS
COUNTY OF COOKE)

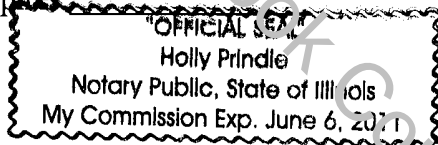
I H. Prindle, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Thomas B. Silverstein, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered 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 26th day of July, 2007.



Notary Public

My Commission Expires:



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EXHIBIT A

THE PROPERTY

LOTS 40 AND 41 IN BURTON'S SUBDIVISION OF LOT 14 IN BRONSON'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Tax Index Number: 17-04-209-020-0000

PROPERTY ADDRESS:

1446 North Dearborn Street, Chicago, Illinois 60610

Property of Cook County Clerk's Office