

UNOFFICIAL COPY



Doc#: 1031933000 Fee: \$82.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 11/15/2010 08:26 AM Pg: 1 of 24

THIS DOCUMENT PREPARED BY:

Crowley & Lamb, P.C.
350 North LaSalle Street, Suite 900
Chicago, Illinois 60610

AFTER RECORDING RETURN TO:

PNC Bank, National Association
1 N. Franklin
21st Floor (D1-Y806-21-1)
Chicago, IL 60606
Attn: Jason A. Rockwell

This space reserved for Recorder's use only

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is executed as of October 27, 2010 but made effective as of February 2, 2010, by and among **Interstate-Lemont, LLC**, an Illinois limited liability company ("Borrower"), having an address of 385 Airport Road, Suite 104, Elgin, IL 60011; **Thomas Barbera and Paul Ahern** (together, "Guarantor"); **Interstate-Gurnee, LLC**, an Illinois limited liability company ("Related Borrower") having an address of 345 Airport Road, Suite 104, Elgin, IL 60011; and **PNC Bank, National Association**, successor to National City Bank, its successors and assigns, having an address as set forth above ("Lender").

RECITALS:

A. Lender made a loan (the "Lemont Loan") to Borrower as evidenced by a Note dated February 2, 2007, in the original principal amount of \$2,775,000.00 from Borrower in favor of Lender (the "Lemont Note"). The Lemont Loan is further evidenced by that certain Loan Agreement dated February 2, 2007 between Borrower and Lender (the "Lemont Loan Agreement") as amended and modified from time to time. The Lemont Note is secured, in part, by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated February 2, 2007 (the "Lemont Mortgage") executed by Borrower in favor of Lender and recorded with the Cook County, IL Recorder as Document No. 0706735184 against the real property legally described on Exhibit A hereto (the "Lemont Property"), as well as a Guaranty of Payment and Completion ("Lemont Guaranty") from the Guarantor in favor of Lender. The Lemont Note, the Lemont Mortgage, the Lemont Loan Agreement, the Lemont Guaranty and all other documents evidencing or securing the Lemont Loan, as amended and modified, are hereinafter collectively referred to as the "Lemont Loan Documents".

Box 400-CTCC

SCY
INT RP
SN
P 24
S

83-59-635 / 733495-D1
L Hynes

UNOFFICIAL COPY

B. Lender made a loan (the "Gurnee Loan") to Related Borrower as evidenced by a Note dated December 10, 2007, in the original principal amount of \$4,200,000.00 from Related Borrower in favor of Lender (the "Gurnee Note"). The Gurnee Loan is further evidenced by that certain Loan Agreement dated December 10, 2007 between Related Borrower and Lender (the "Gurnee Loan Agreement") as amended and modified from time to time. The Gurnee Note is secured in part by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated December __, 2007 (the "Gurnee Mortgage") executed by Related Borrower in favor of Lender and recorded with the Lake Co., IL Recorder as Document No. 6281257 against the real estate legally described on Exhibit B hereto (the "Gurnee Property"), as well as a Guaranty of Payment and Completion ("Gurnee Guaranty") from the Guarantor in favor of Lender. The Gurnee Note, the Gurnee Mortgage, the Gurnee Loan Agreement, the Gurnee Guaranty and all other documents evidencing or securing the Gurnee Loan, as amended and modified, are hereinafter collectively referred to as the "Gurnee Loan Documents".

C. The Lemont Note and the Gurnee Note are together referred to herein as the "Notes"; the Lemont Loan and Gurnee Loan are together referred to herein as the "Loans"; the Lemont Loan Agreement and Gurnee Loan Agreement are together referred to herein as the "Loan Agreements"; the Lemont Mortgage and the Gurnee Mortgage are together referred to as the "Mortgages"; the Lemont Property and the Gurnee Property are together referred to herein as the "Properties"; and the Lemont Guaranty and the Gurnee Guaranty are together referred to herein as the "Guaranty". The Notes, Loan Agreements, Mortgages, the Guaranty, the remaining Lemont Loan Documents and Gurnee Loan Documents and all documents and instruments related to each of the foregoing and all existing, current and future modifications, renewals and replacements thereof and therefor, including the Cross Collateral Agreement (defined below), are collectively referred to as the "Loan Documents". Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Loan Documents.

D. The current principal balance of the Lemont Note is \$2,283,816.60 and the aggregate outstanding principal amount of the Amended Notes (as defined below) which replace the Lemont Note shall not exceed such amount during the term of the Loan. The current principal balance of the Gurnee Note is \$3,542,847.15 and the aggregate outstanding principal amount of the Amended Notes which replace the Gurnee Note shall not exceed such amount plus the Additional Advance (defined below) during the term of the Gurnee Loan.

E. The Maturity Date of the Lemont Loan was February 2, 2010 and the Maturity Date of the Gurnee Loan is December 10, 2010. The Borrower, Related Borrower and Guarantor have requested that Lender extend the Maturity Date of the Loans and Lender is willing to extend the Maturity Date of the Loans on the terms and conditions more fully set forth hereinafter and in the Amended Notes.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the Recitals set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender, Related Borrower and Borrower to modify the Loan Documents, as provided herein, (iii) Borrower's and Related Borrower's agreement to pay all of Lender's reasonable attorneys fees and costs in connection with this Agreement, (iv) the covenants and agreements contained herein, and (v) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Modifications to Loan Documents**. The following modifications are hereby made to Notes and the other the Loan Documents:

UNOFFICIAL COPY

(a) **Extend Maturity.** Lender, Related Borrower and Borrower agree that the Maturity Date for the Loans shall hereby be amended and extended until July 1, 2011. All references in any and all Loan Documents to "Maturity Date" or words of similar import shall now mean July 1, 2011. Borrower and Related Borrower agree that the Loans, together with all obligations under the Loan Documents, shall be due and payable on such Maturity Date, or such earlier date that the Loans and all other obligations of Borrower and Related Borrower to Lender under the Loan Documents shall be due and payable (whether by acceleration or otherwise).

(b) **Additional Advance.** (I) Notwithstanding that the obligation of Lender to make further advances of Gurnee Loan proceeds has ceased, Related Borrower has requested that Lender make and Lender, subject to the conditions set forth below, has agreed to make additional principal advances under the Gurnee Loan in the aggregate not to exceed \$223,000.00 (collectively, the "Additional Advance") to be used by Related Borrower as follows ("Improvements"): (1) up to \$70,200.00 in one advance for tenant improvements for new leases of the Gurnee Property ("Tenant Improvements") and (2) up to \$152,800.00 in one or more advances for related construction costs approved by Lender for the Gurnee Property.

(II) In consideration for and as conditions precedent to Lender making the Additional Advance, Related Borrower and Guarantor agree that: (i) making such Additional Advance shall not obligate Lender to make any further disbursements of proceeds of the Gurnee Loan, (ii) all obligations or commitments of Lender to make further disbursements of proceeds of the Gurnee Loan under the Loan Documents have ceased, (iii) the proceeds of the Additional Advance (a) shall be used solely for the purposes as set forth above, (b) Lender shall not be obligated to fund any request for any portion of the Additional Advance until Lender has received such documents detailing the Improvements and cost of said Improvements to be constructed at the Gurnee Property, including the budget attached hereto as Exhibit C ("Budget") and (c) Lender shall not be obligated to fund any request for the Tenant Improvements portion of Additional Advance until Lender has received such documents satisfactory to Lender that Related Borrower has a firm commitment with a third party to lease space at the Gurnee Property on terms acceptable to Lender and then only in compliance with the terms of the Gurnee Loan Documents, (iv) the Improvements shall be completed no later than **July 1, 2011**, (v) Related Borrower shall not permit any liens to attach to the Gurnee Property during or at the completion of the Improvement process, and (vi) Related Borrower shall pay during the term of the Improvements in full all costs and expenses incurred in connection the Improvements required to avoid any liens attaching to the Gurnee Property. Upon complete and timely satisfaction of the foregoing conditions, as determined by Lender in its sole discretion, Lender will then disburse Gurnee Loan proceeds under the Amended and Restated Gurnee Promissory Note up to the amount of the Additional Advance under such terms and conditions as Lender may deem reasonably necessary to insure that the interest created by the Gurnee Mortgage shall have priority over all possible liens, including those of material suppliers and workmen, including (i) disbursement through a construction escrow established for the Gurnee Loan and obtaining endorsements to the Lender's title insurance policy for the Gurnee Loan to cover the amount and date of each draw of Additional Advance insuring that the Gurnee Mortgage is a first, prior and paramount lien on the Property, (ii) reimbursement to Related Borrower of any progress payments made by Related Borrower during the Improvements period related to Tenant Improvements and (iii) for the Tenant Improvements draw, issuance of a certificate of occupancy for the Gurnee Property by the appropriate governmental entity. Lender may require, among other things, that progress payments be made by Related Borrower through the construction escrow and that the disbursement request for the Additional Advance be supported by receipted bills, expense affidavits, waivers of liens, construction progress reports, and such other documentation as Lender may reasonably request. The Gurnee Mortgage shall constitute a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of Illinois, until completion of the Improvements.

UNOFFICIAL COPY

(III) Lender reserves the right to engage an inspecting architect from time to time at Related Borrower's expense to review and opine on completion status of the Improvements and to inspect Related Borrower's books, accounts, and records and to make copies and memoranda of Related Borrower's books, accounts, and records with respect to the Improvements. If Lender in good faith determines that any work or materials do not conform to the approved plans and specifications or sound building practices, or otherwise depart from any of the requirements of this Agreement, Lender may require the work to be stopped and withhold disbursements until the matter is corrected. In such event, Related Borrower will promptly correct the work to the Lender's satisfaction. No such action by Lender will affect Related Borrower's obligation to complete the Improvements on or before any completion date agreed to by Lender. Lender is under no duty to supervise or inspect the construction or examine any books and records. Any inspection or examination by Lender is for the sole purpose of protecting Lender's security and preserving Lender's rights under this Agreement. No default of Related Borrower will be waived by any inspection by Lender. In no event will any inspection by Lender be a representation that there has been or will be compliance with the plans and specifications or that the construction is free from defective materials or workmanship. Prior to the commencement of the Improvements, Related Borrower shall provide a sworn statement to Lender of all costs associated with such Improvements, in form and substance satisfactory to Lender. Each disbursement of the Additional Advance must be made for payment of Improvements in strict accordance with the Budget, as the Budget may be amended with the approval of Lender in its sole discretion.

(IV) Related Borrower shall cause the Improvements to be constructed and equipped in a diligent and orderly manner in strict accordance with the plans and specifications approved by Lender, any construction contract, and all applicable law, ordinances, codes, regulations, and rights of adjoining or concurrent Gurnee Property owners. Upon demand of Lender, Related Borrower shall promptly correct any defect in the Improvements or any departure from the plans and specifications not approved by Lender in writing before further work shall be done upon the portion of the Improvements affected. Related Borrower shall promptly inform Lender of (1) all material adverse changes in the financial condition of any general contractor; (2) any litigation and claims, actual or threatened, affecting all or a portion of the Gurnee Property or any general contractor, which could materially affect the successful completion of the Improvements or the ability of any general contractor or Related Borrower to complete the Improvements as agreed; and (3) any new change order for the Improvements. No materials, equipment, fixtures, or articles or personal Gurnee Property placed in or incorporated into the Gurnee Property shall be purchased or installed under any security agreement or other agreement whereby the seller reserved or purports to reserve title or the right of removal or repossession, or the right to consider such items as personal Gurnee Property after their incorporation into Gurnee Property, unless otherwise authorized by Lender in writing.

(c) **Tax Escrow.** Commencing on the date hereof and continuing on the first day of each and every month thereafter beginning with November 1, 2010, Borrower and Related Borrower shall also pay to Lender in addition to the monthly payments under the Notes and concurrently therewith in a single payment monthly the sums for real estate taxes, general and special assessments for each of the Properties as estimated by Lender as set forth on Schedule 1 attached hereto. Such sums shall be held by Lender for payment of such taxes and assessments as and when due. Lender shall have the right to commingle and hold such sums with its general funds, and no interest shall accrue thereon in favor of Borrower and Related Borrower. In case of an Event of Default, Lender may use and apply such funds to cure such Event of Default or as a payment of the Loans, applied as determined by Lender.

(d) **Interest Reserves.** (ii) Borrower and Related Borrower shall deposit in deposit accounts at and with Lender the amounts set forth below for the following purposes:

(1) Borrower shall deposit \$63,440.00 on the date hereof and \$24,500.00 on January 1, 2011 in a demand deposit account with Lender as a reserve to be used to make

UNOFFICIAL COPY

interest and principal payments on the non- PIK portion of Lemont Loan for the next 12 months (the "Lemont Interest Reserve").

(2) Related Borrower shall deposit \$96,024.00 on the date hereof and \$40,500.00 on January 1, 2011 in a demand deposit account with Lender as a reserve to be used to make interest and principal payments on the non- PIK portion of the Gurnee Loan for the next 12 months ("Gurnee Interest Reserve"; together with the Lemont Interest Reserve, the "Reserves").

Borrower acknowledges and agrees that: (i) Lender will place a "hold" on the above-referenced demand deposit accounts in the then current amount of the respective Reserve and (ii) such demand deposit accounts are assigned to Lender as additional collateral for the Loans. To the extent there are insufficient funds in the any Reserve to pay the monthly principal and interest payments due under the applicable Note, Borrower and Related Borrower shall immediately pay such shortfall to Lender and, if said funds are not promptly paid, Lender shall have the right to declare Borrower and Related Borrower in default under the terms of the Notes and the other Loan Documents.

Lender shall disburse interest and principal payments directly to Lender when due from the Reserves to the extent funds are available in the Reserves and, thereafter, Borrower shall pay to Lender accrued interest and principal payable on the Loans out of pocket. Borrowers made certain payments of accrued interest on the Loans during the period from February 2, 2010 until the date hereof and, to the extent accrued interest and principal due on the Loans during such period was not paid, such unpaid accrued interest and principal shall be paid on the date hereof from the Reserves.

(ii) To secure Borrower's and Related Borrower's obligations with respect to the Loans and under this Agreement, the Notes and all other Loan Documents, each of Borrower and Related Borrower hereby grants Lender a security interest in the applicable Reserve, the related deposit account and the funds therein under the provisions of the Uniform Commercial Code in effect in Illinois. No interest shall accrue upon Reserves. Borrower and Related Borrower shall not have the right to withdraw, pledge, alienate, assign, or otherwise dispose or in any way transfer its interest in the Reserves or the funds contained therein. Lender is hereby authorized to and may disburse all or a portion of the Reserves from time to time in the sole discretion of Lender. In case of an Event of Default, Lender may use and apply funds in the Reserves or any other monies deposited by Borrower or Related Borrower with Lender, regardless of the purpose for which deposited, to cure such Event of Default or as a payment of the Loans applied as determined by Lender. At the Maturity Date, if the Loans and all other obligations of Borrower and Related Borrower to Lender are paid in full, any amounts remaining in the Reserves shall be returned to Borrower and Related Borrower.

(e) **Release Payments.** (I) Upon any sale of the Lemont Property, the amount of sale proceeds required to be paid to Lender for application to the Lemont Loan in order to release the Lemont Mortgage shall be determined as follows:

(1) If Gurnee Property's Debt Service Coverage Ratio is 1.0:1.0 or greater at the time any Lemont Property sale closes, the release payment of the Lemont Property will be the greater of (i) \$3,000,000 and (ii) 85% of gross sale proceeds of the Lemont Property.

(2) If Gurnee Property's Debt Service Coverage Ratio is less than 1.0:1.0 at the time the Lemont Property sale closes, the release payment for the Lemont Property shall be the greater of (i) \$3,000,000.00, (ii) 100% of net sale proceeds of the Lemont Property, after customary costs of sale approved by Lender in its sole discretion, and (iii) 95% of gross sale proceeds of the Lemont Property. The difference between the release payment to Lender as determined above and 85% of

UNOFFICIAL COPY

gross sale proceeds of the Lemont Property ("Additional Proceeds") will be placed into a Lender controlled account and will be disbursed to the Borrower if the Gurnee Property achieves a 1.0:1.0 Debt Service Coverage Ratio no later than the earlier of (i) the date which is 3 months from closing of the Lemont Property sale and (ii) the Maturity Date of the Lemont Loan and Gurnee Property Loan. If the Gurnee Property Debt Service Coverage Ratio of at least 1.0:1.0 is not met within such time period, the Additional Proceeds shall be applied by Lender as a principal pay down on the Gurnee Property Loan.

(3) If the Gurnee Property is sold and the Gurnee Loan has been paid in full prior to the sale of the Lemont Property, the release payment for the Lemont Property will be the aggregate outstanding obligations under the Lemont Loan.

(II) Upon any sale of the Gurnee Property, the amount of sale proceeds required to be paid to Lender for application to the Gurnee Loan in order to release the Gurnee Mortgage shall be determined as follows:

(1) The release payment shall be the greatest of (i) the aggregate outstanding obligations under the Gurnee Loan at the time of release of the Gurnee Property, (ii) 100% of net sale proceeds of the Gurnee Property, after customary costs of sale approved by Lender in its sole discretion, of the Gurnee Property and (iii) 91% of gross sale proceeds of the Gurnee Property.

(2) If the Lemont Property is sold and the Lemont Loan has been paid in full prior to the sale of the Gurnee Property, the release payment for the Gurnee Property will be the aggregate outstanding obligations under the Gurnee Loan.

(III) Prior to execution, Borrower or Related Borrower shall submit the sale contract (each "Sale Contract") for sale of the Lemont Property or Gurnee Property for approval by Lender in its sole discretion. Borrower or Related Borrower, as applicable, shall comply at all times with all covenants and conditions contained in each Sale Contract and all documents related to the Sale Contract.

(f) **Unlimited Guaranties.** Section 5 Recourse to Guarantors of each of the Guaranties is hereby deleted in its entirety. The right of recovery against the Guarantors under the Guaranties is expressly stated to be unlimited.

(g) **Events of Default.** (i) The term "Event of Default" under the Loan Documents shall include Borrower, Related Borrower or Guarantor failing to comply with or perform any term, obligation, covenant or condition contained in any Loan Document, including this Agreement, or in any other agreement between Borrower and Lender, Related Borrower and Lender or Guarantor and Lender.

(ii) Section 9.1 Events of Default of each of the Loan Agreements is modified as follows:

(1) Clause (a) (i) is hereby amended by deleting the reference to "ten (10) days" therein and substituting therefor the phrase "three (3) days".

(2) Clause (b) is hereby deleted in its entirety and the following is substituted therefor:

"(b) any failure of Borrower to observe or perform any covenant or other agreement contained in this Agreement or any other Loan Document except payment of the Note; provided that no such failure (except as to Events of Default specified elsewhere in this Section 9.1 or where a shorter period is specified herein or elsewhere in the Loan Documents for a particular default) shall constitute an Event of Default unless such failure continues for a period of 30 days after the

UNOFFICIAL COPY

earlier to occur of (i) the date when Borrower becomes aware of such failure and (ii) the date when the Lender gives written notice to the Borrower of such failure;"

(h) **Date of Mortgage.** The parties hereto agree that the Gurnee Mortgage shall be deemed dated as of December 10, 2007.

2. **Amendment of the Notes and Principal Amounts of Loans.** (i) The Lemont Note shall be amended and restated by (i) that certain Amended and Restated Promissory Note of even date herewith executed by Borrower in favor of Lender (the "Lemont Amended Note") in the principal amount of \$1,682,999.60 and (ii) that certain Amended and Restated PIK Promissory Note of even date herewith executed by Borrower in favor of Lender (the "Lemont PIK Amended Note"; together with the Lemont Amended Note, the "Lemont Amended Notes") in the principal amount of \$600,817.00. As of the date hereof, the Lemont Amended Notes restate and replace the Lemont Note and are not a repayment or novation of the Lemont Note. All references in the Lemont Mortgage and any and all other Lemont Loan Documents to the "Note" or words of similar import shall now mean the Lemont Amended Notes, as amended or replaced. Notwithstanding any provision to the contrary in the Loan Documents, the interest rate and payments applicable to the Lemont Loan shall be as set forth in the Lemont Amended Notes. The Lemont Loan shall now be evidenced by the Lemont Amended Notes and the principal and accrued interest outstanding under the Lemont Amended Notes (including "Principal Increases" as defined in the Lemont PIK Amended Note) shall be the principal and interest outstanding under the Lemont Loan.

(ii) The Gurnee Note shall be amended and restated by (i) that certain Amended and Restated Promissory Note of even date herewith executed by Related Borrower in favor of Lender (the "Gurnee Amended Note") in the principal amount of \$3,203,900.15 and (ii) that certain Amended and Restated PIK Promissory Note of even date herewith executed by Related Borrower in favor of Lender (the "Gurnee PIK Amended Note"; together with the Gurnee Amended Note, the "Gurnee Amended Notes"; collectively with the Lemont Amended Notes, the "Amended Notes") in the principal amount of \$561,947.00. As of the date hereof, the Gurnee Amended Notes restate and replace the Gurnee Note and are not a repayment or novation of the Gurnee Note. All references in the Gurnee Mortgage and any and all other Gurnee Loan Documents to the "Note" or words of similar import shall now mean the Gurnee Amended Notes, as amended or replaced. Notwithstanding any provision to the contrary in the Loan Documents, the interest rate and payments applicable to the Gurnee Loan shall be as set forth in the Gurnee Amended Notes. The Gurnee Loan shall now be evidenced by the Gurnee Amended Notes and the principal and accrued interest outstanding under the Gurnee Amended Notes (including "Principal Increases" as defined in the Gurnee PIK Amended Note) shall be the principal and interest outstanding under the Gurnee Loan.

(iii) As of the date of this Agreement, based on the Additional Advance, the aggregate principal amount of the Gurnee Loan shall be \$3,765,847.15. All references in the Gurnee Mortgage or other Gurnee Loan Documents as to the "Loan Amount" or principal indebtedness secured by the Gurnee Mortgage or other Gurnee Loan Documents shall be amended to state \$3,765,847.15 plus "Principal Increases" as defined in the Gurnee PIK Amended Note.

(iv) As of the date of this Agreement, the aggregate principal amount of the Lemont Loan shall be \$2,283,816.60. All references in the Lemont Mortgage or other Lemont Loan Documents as to the "Loan Amount" or principal indebtedness secured by said Lemont Mortgage or other Lemont Loan Documents shall be amended to state \$2,283,816.60 plus "Principal Increases" as defined in the Lemont PIK Amended Note.

3. **Cross-Collateralization and Cross Default.** All loans presently existing and hereafter obtained from the Lender by the Borrower and all loans presently existing and hereafter obtained from the Lender by the Related Borrower shall be cross-collateralized. Any and all security agreements, guaranties,

UNOFFICIAL COPY

mortgages, loan agreements and other agreements securing one or more loans of Borrower and Related Borrower to Lender shall secure all indebtedness of Borrower to Lender and all indebtedness of Related Borrower to Lender. A default by either Borrower or Related Borrower under their respective loan(s) from Lender shall be deemed an event of default under the terms of the other loan(s) to Borrower from Lender and to Related Borrower from Lender and shall afford the Lender the right to pursue one or more remedies against all of Borrower, Related Borrower, the Guarantor and the Properties, as Lender deems reasonable and necessary.

4. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty, as modified herein, and agrees that the Guaranty, as modified herein, is in full force and effect following the execution and delivery of this Agreement and that the Guarantor shall be liable to Lender for all amounts due in connection with the Amended Notes and other Loan Documents. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender under the Guaranty, except as provided in the Guaranty.

5. **Continuing Validity.** Except as expressly modified above, the terms of the original Mortgage, the Notes and the other Loan Documents shall remain unchanged and in full force and effect and are legally valid, binding, and enforceable in accordance with their respective terms. Consent by Lender to this Agreement does not waive Lender's rights to require strict performance of the Mortgage (as amended above) nor obligate Lender to make any future modifications. Nothing in this Agreement shall constitute a satisfaction of the Notes and other Loan Documents secured by the Mortgages. It is the intention of Lender to retain as liable all parties to the Mortgages and all parties, makers and endorsers to the Notes, including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall not be released by virtue of this Agreement.

6. **Releases.** Borrower, Related Borrower and Guarantor, in consideration of the execution of this Agreement, and the performance of all terms contained herein to be performed by Lender, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, do hereby remise, release and forever discharge, and by these presents, do for their successors, assigns, heirs, administrators, executors, personal representatives, agents, grantees, and successors in interest, remise, release and forever discharge Lender and its respective successors, assigns, heirs, administrators, officers, personal representatives, attorneys, agents and successors in interest, from all actions, suits, causes of action, damages, expenses, liabilities, claims, accounts and demands, whatsoever, whether or not well-founded in fact or in law which they have, have had, or at any time may have, could have, or might have but for the execution of this Agreement, asserted against Lender, for or by reason of or in respect of any matter, cause or thing whatsoever, whether known or unknown, developed or undeveloped, past, present or future or whether permanent, continuing or otherwise, arising out of or connected with the Loans, the Notes, the other Loan Documents or this Agreement. As of the date hereof, none of Borrower, Related Borrower or Guarantor have any claims, counterclaims, defenses, or set-offs with respect to the Loans or the Loan Documents, as modified herein.

7. **Representations and Warranties of Borrower, Related Borrower and Guarantor.** Borrower, Related Borrower and Guarantor hereby represent, covenant and warrant to Lender as follows:

- (a) The representations and warranties in the Notes, the Loan Agreements, 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 Loan Documents) under the Notes, the Mortgages or the other Loan Documents and neither Borrower nor Guarantor know of

UNOFFICIAL COPY

any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Notes, the Mortgages or the other Loan Documents.

(c) The Notes and the other 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 and Guarantor 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 Related Borrower, or Guarantor from the date of the most recent financial statement received by Lender which could have a material adverse effect on any the Loans or any of the Properties.

(e) The execution and delivery of this Agreement and the Amended Notes and the performance of the Loan Documents, as modified herein, have been duly authorized by all requisite action by or on behalf of Borrower and Related Borrower. This Agreement and the Amended Notes have been duly executed and delivered on behalf of Borrower, Related Borrower and Guarantor, as applicable, and are the legal, valid and binding obligations of Borrower, Related Borrower and Guarantor, as applicable, enforceable in accordance with their terms.

8. **Conditions Precedent** As conditions precedent to Lender's agreements contained herein and the effectiveness of this Agreement, Borrower and Related Borrower shall (i) pay to Lender (A) all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, attorneys' fees and expenses and (B) the amounts of the initial deposits in the Reserves, (ii) deliver to Lender a date down endorsement to Lender's title insurance policy for each of the Loans showing no exceptions thereto other than the Permitted Exceptions set forth in the Mortgages, reflecting the recording of this Agreement and insuring the first priority of the lien of each Mortgage and, for the Gurnee date down, containing a pending disbursements endorsement and Borrower and Related Borrower shall execute and deliver all documents required by the title company(ies) in connection with the date downs; (iii) execute and cause the Related Borrower and contractor making the Improvements to execute with Chicago Title and Lender a construction escrow agreement in the form provided by Chicago Title, and an overall Budget for the Improvements (iii) execute and deliver and cause Guarantor to execute and deliver to Lender the signature pages to this Agreement properly notarized; (iv) execute and deliver to Lender the applicable Amended Notes; (v) execute and deliver and cause Guarantor to execute and deliver and deliver to Lender a Cross- Collateral and Cross Default Agreement ("Cross Collateral Agreement"), in the form presented by Lender; (vi) execute and deliver and cause the other necessary parties to execute and deliver the resolutions of Borrower and Related Borrower, in the form presented by Lender, authorizing this Agreement and related matters; and (vii) execute and/or deliver and cause the other necessary parties to execute and/or deliver all other documents and instruments reasonably required by Lender in connection with this Agreement.

9. **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, Related Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Related Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Related Borrower, Guarantor and Lender each acknowledge and waive 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

UNOFFICIAL COPY

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, Related Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Related 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, Related 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 Notes and the other Loan Documents are and remain unmodified and in full force and effect. In the event of any inconsistency or conflict between this Agreement and the Loan Documents, the terms, provisions and conditions contained in this Agreement shall govern and control. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, unenforceable or invalid under any jurisdiction, such provision shall as to such jurisdiction, be severable and be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

(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 "Mortgage", or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the applicable Note, the applicable 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 or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) Borrower and Related Borrower shall indemnify, defend, and hold Lender harmless from any and all claims asserted against Lender or the Property by any person, entity or governmental body, or arising out of or in connection with the Property or Improvements. Lender shall be entitled to appear in any proceedings to defend itself against such claims, and all costs and expenses attorneys' fees incurred by Lender in connection with such defense shall be paid by the Borrower and Related Borrower to Lender. Lender shall, in its sole discretion, be entitled to settle or compromise any asserted claims against it, and such settlement shall be binding upon Borrower and Related Borrower for purposes of this indemnification. All amounts paid by Lender under this paragraph shall be secured by Lender's Mortgages on the Properties, shall be deemed an additional principal advance under the Loans, payable upon demand, and shall bear interest at the highest rate applicable to such Loans.

UNOFFICIAL COPY

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

(i) Time is of the essence of Guarantor's, Related Borrower's and Borrower's obligations under this Agreement.

[SIGNATURE PAGE ATTACHED]

Property of Cook County Clerk County
COOK COUNTY
RECORDS & DEEDS
SCANNED BY _____ Office

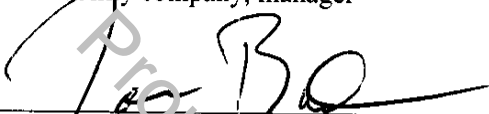
UNOFFICIAL COPY

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

BORROWER:

Interstate-Lemont, LLC, an Illinois limited liability company

By: Interstate-Commerce Associates, an Illinois limited liability company, manager

By: 
Thomas Barbera, manager

LENDER:

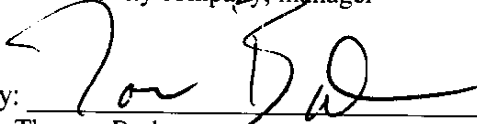
PNC BANK, NATIONAL ASSOCIATION, successor to NATIONAL CITY BANK

By: _____
Its: _____

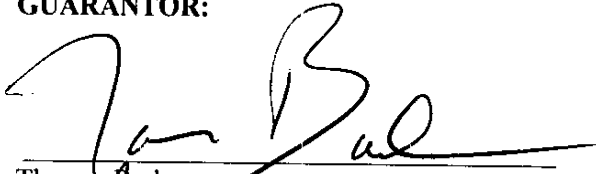
RELATED BORROWER:

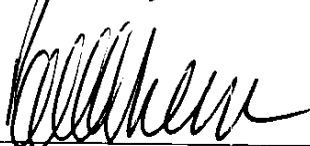
Interstate-Gurnee, LLC, an Illinois limited liability company

By: Interstate-Commerce Associates, an Illinois limited liability company, manager

By: 
Thomas Barbera, manager

GUARANTOR:


Thomas Barbera


Paul Ahern

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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

BORROWER:

Interstate-Lemont, LLC, an Illinois limited liability company

By: Interstate-Commerce Associates, an Illinois limited liability company, manager

By: _____
Thomas Barbera, manager

LENDER:

PNC BANK, NATIONAL ASSOCIATION, successor to NATIONAL CITY BANK

By: Jan Vesel
Its: Vice President

RELATED BORROWER:

Interstate-Gurnee, LLC, an Illinois limited liability company

By: Interstate-Commerce Associates, an Illinois limited liability company, manager

By: _____
Thomas Barbera, manager

GUARANTOR:

Thomas Barbera

Paul Ahern

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)

COUNTY OF Cook) SS.
)

I, Maritza Beltran, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Jason Rockwell, VP president of **PNC BANK, NATIONAL ASSOCIATION** successor to National City Bank, known to me to be the same person whose name is subscribed to the foregoing instrument as officer, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary acts, and as the free and voluntary act of such bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of October, 2010.

Maritza Beltran
Notary Public

My Commission Expires:

Aug. 12, 2013



STATE OF ILLINOIS)

COUNTY OF _____) SS.
)

I, _____, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Thomas Barbera, individually and as manager of the manager of Interstate-Gurnee, LLC and 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 the said instrument as his own free and voluntary act, and as the free and voluntary act of such company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2010.

Notary Public

My Commission Expires:

STATE OF ILLINOIS)

COUNTY OF _____) SS.
)

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, _____, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that _____, _____ president of **PNC BANK, NATIONAL ASSOCIATION** successor to National City Bank, known to me to be the same person whose name is subscribed to the foregoing instrument as officer, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary acts, and as the free and voluntary act of such bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2010.

Notary Public

My Commission Expires:

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

I, Nancy R. Pickens, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Thomas Barbera, individually and as manager of the manager of Interstate-Gurnee, LLC and 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 the said instrument as his own free and voluntary act, and as the free and voluntary act of such company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27th day of October, 2010.

Nancy R. Pickens
Notary Public

My Commission Expires:

12-22-13



STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

UNOFFICIAL COPY

I, Nancy R. Pickens, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Thomas Barbera, individually and as manager of the manager of Interstate-Lemont, LLC subscribed to the foregoing instrument, 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 such company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27th day of October, 2010.

Nancy R. Pickens
Notary Public

My Commission Expires:

12-22-13



STATE OF ILLINOIS)

) SS.

COUNTY OF Kane)

I, Nancy R. Pickens, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Paul Ahern individually and 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 the 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 27th day of October, 2010.

Nancy R. Pickens
Notary Public

My Commission Expires:

12-22-13



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING ON THE WEST LINE OF SAID SOUTHWEST 1/4 OF SECTION 14, AT A POINT WHICH IS 393.65 FEET NORTH FROM THE SOUTHWEST CORNER OF SAID SOUTHWEST 1/4 AND RUNNING THENCE NORTH ALONG SAID WEST LINE OF THE SOUTHWEST 1/4, A DISTANCE OF 565.24 FEET; THENCE NORTHEASTWARDLY ALONG A STRAIGHT LINE, THE EASTERLY TERMINUS OF SAID STRAIGHT LINE BEING A POINT WHICH IS 1220.29 FEET (MEASURED PERPENDICULARLY) NORTH FROM THE SOUTH LINE AND 608.88 FEET (MEASURED PERPENDICULARLY) EAST FROM THE WEST LINE OF SAID SOUTHWEST 1/4, A DISTANCE OF 57.58 FEET; THENCE SOUTHEASTWARDLY ALONG THE ARC OF A CIRCLE CONVEX TO THE NORTHEAST AND HAVING A RADIUS OF 461.96 FEET, A DISTANCE OF 486.02 FEET TO A POINT WHICH IS 401.14 FEET (MEASURED PERPENDICULARLY) EAST FROM THE WEST LINE AND 674.25 FEET (MEASURED PERPENDICULARLY) NORTH FROM THE SOUTH LINE OF SAID SOUTHWEST 1/4; THENCE EASTWARDLY ALONG A STRAIGHT LINE, A DISTANCE OF 448.41 FEET TO AN INTERSECTION WITH A LINE WHICH EXTENDS NORTHWARDLY FROM A POINT WHICH IS 915.35 FEET (MEASURED PERPENDICULARLY) EAST FROM THE WEST LINE AND 369.08 FEET (MEASURED PERPENDICULARLY) NORTH FROM THE SOUTH LINE OF SAID SOUTHWEST 1/4, TO A POINT WHICH IS 1264.36 FEET (MEASURED PERPENDICULARLY) NORTH FROM THE SOUTH LINE AND 744.61 FEET (MEASURED PERPENDICULARLY) EAST FROM THE WEST LINE OF SAID SOUTHWEST 1/4; THENCE SOUTHWARDLY ALONG SAID LAST DESCRIBED STRAIGHT LINE, A DISTANCE OF 289.30 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF PROPERTY CONVEYED TO NORTHERN ILLINOIS GAS COMPANY BY DEED RECORDED MARCH 6, 1963 AS DOCUMENT 18736758; THENCE WESTWARDLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 69.89 FEET TO AN ANGLE POINT IN SAID LINE; THENCE SOUTHWESTWARDLY CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 729.45 FEET TO A POINT WHICH IS 120.00 FEET EASTERLY FROM THE INTERSECTION OF SAID NORTHERLY RIGHT-OF-WAY LINE (EXTENDED SOUTHWESTWARDLY) WITH THE WEST LINE OF SAID SOUTHWEST 1/4, AND THENCE NORTHWESTWARDLY ALONG A STRAIGHT LINE, A DISTANCE OF 147.24 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE GRANT OF EASEMENT FROM NORTHERN ILLINOIS GAS COMPANY TO A.E. STALEY MANUFACTURING COMPANY RECORDED MARCH 6, 1963 AS DOCUMENT 18736259 AND FILED AS DOCUMENT LR2080370 FOR CONSTRUCTION, OPERATION, RECONSTRUCTION, REPAIR, MAINTENANCE AND USE OF TWO PUBLIC OR PRIVATE ROAD CROSSINGS 30 FEET IN WIDTH OVER THE FOLLOWING DESCRIBED LAND, PROVIDED THAT SUCH ROADS BE LOCATED AND CONSTRUCTED AT SUBSTANTIALLY RIGHT ANGLES TO SAG-LEMONT ROAD (ALSO KNOWN AS CHICAGO-JOLIET ROAD):

THE NORTHERLY 87.50 FEET OF THE SOUTHERLY 120.50 FEET (BOTH MEASUREMENTS BEING PERPENDICULAR TO THE CENTER LINE OF THE SAG-LEMONT ROAD ALSO KNOWN AS THE CHICAGO AND JOLIET ROAD) OF THE WEST 428 FEET OF THAT PART OF THE

UNOFFICIAL COPY

SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE CENTER LINE OF THE SAG-LEMONT ROAD, ALSO KNOWN AS THE CHICAGO AND JOLIET ROAD;

ALSO A TRIANGULAR SHAPED PARCEL OF LAND IN SAID SOUTHWEST 1/4 LYING SOUTHWESTERLY OF A LINE DRAWN FROM A POINT 120 FEET NORTH OF THE INTERSECTION OF THE WEST LINE OF THE SOUTHWEST 1/4 WITH THE NORTHERLY LINE OF SAID SOUTHERLY 120.50 FEET TO A POINT IN THE NORTHERLY LINE OF SAID SOUTHERLY 120.50 FEET WHICH POINT IS 120 FEET NORTHEASTERLY OF THE WEST LINE OF SAID SOUTHWEST 1/4 AS MEASURED ALONG THE NORTHERLY LINE OF SAID SOUTHERLY 120.50 FEET.

ALSO THE SOUTHERLY 120.50 FEET (AS MEASURED PERPENDICULAR TO THE SOUTHERLY LINES) OF THE FOLLOWING DESCRIBED PROPERTY: THAT PART OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE CENTER LINE OF THE CHICAGO AND JOLIET ROAD WITH THE EAST LINE OF THE WEST 438 FEET OF SAID SOUTHWEST 1/4, WHICH POINT IS 259.72 FEET NORTH (MEASURED PERPENDICULARLY) FROM THE SOUTH LINE OF SAID SOUTHWEST 1/4 AND RUNNING THENCE NORTH ALONG SAID EAST LINE OF THE WEST 438 FEET A DISTANCE OF 842.55 FEET TO ITS POINT OF INTERSECTION WITH THE SOUTHERLY LINE OF THE RIGHT OF WAY OF THE GULF, MOBILE AND OHIO RAILWAY COMPANY (FORMERLY THE CHICAGO AND ALTON RAILROAD) AS THE SAME WAS THEN LOCATED; THENCE NORTHEASTWARDLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE A DISTANCE OF 339.82 FEET TO A POINT WHICH IS 749.98 FEET (MEASURED PERPENDICULARLY) EAST FROM THE WEST LINE AND 1236.21 FEET (MEASURED PERPENDICULARLY) NORTH FROM SAID SOUTH LINE OF SAID SOUTHWEST 1/4; THENCE SOUTHWARDLY A DISTANCE OF 882.35 FEET TO A POINT ON SAID CENTER LINE OF THE CHICAGO JOLIET ROAD WHICH IS 915.35 FEET (MEASURED PERPENDICULARLY) EAST FROM SAID WEST LINE AND 369.08 FEET (MEASURED PERPENDICULARLY) NORTH FROM SAID SOUTH LINE OF SAID SOUTHWEST 1/4; THENCE WESTWARDLY ALONG SAID CENTER LINE OF ROAD A DISTANCE OF 71.77 FEET TO A POINT WHICH IS 843.90 FEET (MEASURED PERPENDICULARLY) EAST FROM SAID WEST LINE AND 362.51 FEET (MEASURED PERPENDICULARLY) NORTH FROM SAID SOUTH LINE OF SAID SOUTHWEST 1/4, AND THENCE SOUTHWESTWARDLY, CONTINUING ALONG SAID CENTER LINE OF ROAD A DISTANCE OF 418.97 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS GRANTED BY GRANT OF ROADWAY EASEMENT RECORDED DECEMBER 11, 1962 AS DOCUMENT 18669216 BY NORTH AMERICAN CAR CORPORATION TO A.E. STALEY MANUFACTURING COMPANY, ITS SUCCESSORS AND ASSIGNS. IN COMMON WITH NORTH AMERICAN AND ALL OTHERS HAVING A LIKE RIGHT TO PASS AND REPASS ALONG THAT PORTION OF THE THEN EXISTING PRIVATE ROAD LOCATED ON THE SERVIENT TENEMENT KNOWN AS THE "MALEYROAD" WHICH LIES EASTERLY OF THE DOMINANT TENEMENT FOR INGRESS THERETO FROM THE LEMONT SAG ROAD (ALSO KNOWN AS THE CHICAGO AND JOLIET ROAD) AND EGRESS FROM THE DOMINANT TENEMENT TO SAID ROAD.

PARCEL 4:

THAT PART OF LOT 3 IN PEW'S DIVISION, A PART OF SECTION 15, TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN. DESCRIBED AS THE EAST 20 FEET OF LOT 3 MEASURED PERPENDICULAR TO THE EAST LINE THEREOF LYING SOUTH OF A

UNOFFICIAL COPY

LINE DRAWN 25 FEET SOUTHEASTERLY MEASURED PERPENDICULAR TO AND PARALLEL WITH THE NORTHERLY LINE OF LOT 3, SAID PART LYING SOUTHEASTERLY OF THE RIGHT OF WAY OF GM AND O RIGHT OF WAY, IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: 13555 Main Street, Lemont, Illinois

P.I.N.: 22-14-300-035-0000, 22-14-300-037-0000, 22-15-200-012-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

LEGAL DESCRIPTION

PARCEL 1: ALL THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 24, TOWNSHIP 45 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE NORTH LINE OF THE SOUTH 473 FEET OF SAID QUARTER QUARTER SECTION WHICH IS 328.70 FEET WEST OF THE NORTHEAST CORNER THEREOF; THENCE WEST, ALONG SAID NORTH LINE, A DISTANCE OF 336.93 FEET, MORE OR LESS, TO A POINT IN THE EASTERLY RIGHT OF WAY LINE OF THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY, BEING ALSO THE WESTERLY LINE OF BLOCK 32 IN FREDERICK H. BARTLETT'S NORTH SHORE GARDENS, A SUBDIVISION IN SAID SECTION 24, ACCORDING TO THE PLAT THEREOF, RECORDED SEPTEMBER 3, 1924, AS DOCUMENT 245209, IN BOOK "M" OF PLATS, PAGES 90 AND 91, IN LAKE COUNTY, ILLINOIS; THENCE NORTHWESTERLY, ALONG THE WESTERLY LINE OF BLOCK 32 AFORESAID, A DISTANCE OF 846.74 FEET, MORE OR LESS, TO THE NORTHWEST CORNER THEREOF; THENCE EAST ALONG THE NORTH LINE OF BLOCK 32, A DISTANCE OF 194.66 FEET, MORE OR LESS, TO A POINT ON THE WEST LINE OF THE EAST ONE-HALF OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 24, WHICH IS 30 FEET SOUTH OF THE NORTHWEST CORNER THEREOF; THENCE NORTH, 30 FEET TO THE NORTHWEST CORNER THEREOF; THENCE EAST ALONG THE NORTH LINE OF THE EAST ONE-HALF OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4, A DISTANCE OF 336.13 FEET, MORE OR LESS, TO A POINT WHICH IS 328.7 FEET WEST OF THE NORTHEAST CORNER THEREOF; THENCE SOUTH PARALLEL WITH THE EAST LINE OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 24, A DISTANCE OF 850.93 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING, IN LAKE COUNTY, ILLINOIS.

PARCEL 2: A TRACT OF LAND LYING IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 24, TOWNSHIP 45 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS, TO-WIT; COMMENCING AT A POINT ON THE NORTH LINE OF THE SAID HALF QUARTER QUARTER SECTION WHICH IS 288.7 FEET WEST OF THE NORTHEAST CORNER THEREOF; THENCE SOUTH, PARALLEL WITH THE EAST LINE OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4, A DISTANCE OF 810.93 FEET, MORE OR LESS, TO A POINT IN A LINE DRAWN PARALLEL WITH THE NORTH LINE OF THE SOUTH 473 FEET OF THE SAID QUARTER QUARTER SECTION, AS MEASURED ALONG THE EAST LINE THEREOF, SAID LINE BEING DRAWN 40 FEET NORTH OF SAID NORTH LINE, MEASURED AT RIGHT ANGLES THERETO; THENCE EAST, PARALLEL WITH THE NORTH LINE OF THE SOUTH 473 FEET, AFORESAID, TO A POINT ON THE EAST LINE OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 24; THENCE SOUTH, ALONG SAID EAST LINE, TO THE SOUTHEAST CORNER OF SAID QUARTER QUARTER SECTION; THENCE WEST ALONG THE SOUTH LINE OF SAID QUARTER QUARTER SECTION, TO A POINT ON A LINE DRAWN PARALLEL WITH THE EAST LINE OF THE SAID QUARTER QUARTER SECTION AND 40 FEET WEST THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE NORTH ALONG THE LAST DESCRIBED LINE, TO A POINT ON THE NORTH LINE OF THE SOUTH 473 FEET OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 AS MEASURED ALONG THE EAST LINE THEREOF; THENCE WEST, ALONG THE NORTH LINE OF SAID SOUTH 473 FEET, TO A POINT WHICH IS 328.7 FEET WEST OF THE EAST LINE OF SAID QUARTER QUARTER SECTION (MEASURED ALONG A LINE PARALLEL WITH THE NORTH LINE THEREOF); THENCE NORTH PARALLEL WITH THE EAST LINE OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4, TO A POINT ON THE NORTH LINE OF SAID QUARTER

UNOFFICIAL COPY

QUARTER SECTION; THENCE EAST, ALONG THE SAID NORTH LINE, A DISTANCE OF 40 FEET TO THE PLACE OF BEGINNING, ALL IN LAKE COUNTY, ILLINOIS.

PARCEL 3: A TRACT OF LAND IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 24, TOWNSHIP 45 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS, TO-WIT: COMMENCING AT A POINT ON THE NORTH LINE OF THE SAID HALF QUARTER QUARTER SECTION WHICH IS 288.7 FEET WEST OF THE NORTHEAST CORNER THEREOF; THENCE SOUTH PARALLEL WITH THE EAST LINE OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4, A DISTANCE OF 810.93 FEET, MORE OR LESS, TO A POINT NA LINE DRAWN PARALLEL WITH THE NORTH LINE OF THE SOUTH 473 FEET OF THE SAID QUARTER QUARTER SECTION AS MEASURED ALONG THE EAST LINE THEREOF SAID LINE DRAWN 40 NORTH OF SAID NORTH LINE MEASURED AT RIGHT ANGLES THEREOF; THENCE EAST PARALLEL WITH THE NORTH LINE OF THE SOUTH 473 FEET AFORESAID TO A POINT ON THE EAST LINE OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 24; THENCE NORTH ALONG SAID EAST LINE TO THE NORTHEAST CORNER OF SAID QUARTER QUARTER SECTION; THENCE WEST ALONG SAID NORTH LINE TO THE PLACE OF BEGINNING, IN LAKE COUNTY, ILLINOIS.

PARCEL 4: EASEMENT FOR VEHICULAR AND PEDESTRIAN INGRESS, EGRESS AND ACCESS TO WASHINGTON STREET FOR THE BENEFIT OF PARCELS ONE, TWO AND THREE OVER THE WEST 25 FEET OF THE EAST 65 FEET OF THE SOUTH 157 FEET OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOGETHER WITH THE WEST 15 FEET OF THE EAST 55 FEET OF THE NORTH 316 FEET OF THE SOUTH 473 FEET OF SAID QUARTER QUARTER SECTION, IN TOWNSHIP 45 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS, AS CREATED BY AND DEPICTED IN THE EASEMENT AGREEMENT BY AND BETWEEN 3650 WASHINGTON STREET LLC AND PIERCE HARDY LIMITED PARTNERSHIP RECORDED DECEMBER 14, 2007 AS DOCUMENT 6281254.

Common Address: 3650 and 3660 Washington Street, Gurnee, Illinois

P.I.N.: 07-24-403-001, 07-24-400-065, 07-24-400-066, 07-24-400-067, 07-24-400-068

UNOFFICIAL COPY

EXHIBIT C

BUDGET

Property of Cook County Clerk's Office

**COOK COUNTY
RECORDS & DEEDS
SCANNED BY Office**

UNOFFICIAL COPY

through 06/22/10

Line Item	Original	Changes	Current	%	Completed Work		Future Work to Complete
					Used to Date	% Budget	
Acquisition Costs	3,675,743	0	3,675,743	72.0	3,675,743	100.0	0
Total Land	3,675,743	0	3,675,743	72.0	3,675,743	100.0	0
Site Work / Fencing	238,800	(2,510)	236,290	4.6	166,790	70.6	69,500
Maintenance of Building	144,082	8,000	152,082	3.0	84,082	55.3	68,000
Warehouse Building	56,365	16,936	73,301	1.4	57,901	79.0	15,400
Other Hard Cost	8,745	0	8,745	0.2	8,745	100.0	0
Leasehold Improvements	175,000	5,200	180,200	3.5	110,000	61.0	70,200
Total Hard Costs	622,992	27,626	650,618	12.7	427,518	65.7	223,100
Third Party Reports	42,000	(1,860)	40,140	0.8	33,720	84.0	6,420
Legal	30,000	(3,700)	26,300	0.5	26,300	100.0	0
Developer Fee	129,553	(129,553)	0	0.0	0	0	0
Leasing Commissions	198,761	(168,345)	30,416	0.6	10,735	35.3	19,681
Real Estate Taxes	52,139	51,861	104,000	2.0	55,075	53.0	48,925
Interest Carry	368,186	180,045	548,531	10.7	288,531	52.6	260,000
Other	30,000	2,335	32,335	0.6	32,335	100.0	0
Total Soft Costs	850,939	(69,217)	781,722	15.3	446,696	57.1	335,026
TOTAL USES	5,149,674	(41,591)	5,108,083	100.0	4,549,957	89.1	558,126
Loan	4,200,000	(434,053)	3,765,947	73.7	3,542,847	94.1	223,100
Upfront Equity	714,829	0	714,829	14.0	714,829	100.0	0
Deferred Equity	234,844	392,462	627,307	12.3	292,281	46.6	335,026
TOTAL SOURCES	5,149,674	(41,591)	5,108,083	100.0	4,549,957	89.1	558,126

Property of Cook County Clerk's Office

UNOFFICIAL COPY**Schedule 1**

Real Estate Tax Estimated Payments

<u>Date Payment Due</u>	<u>Amount for Lemont</u>	<u>Amount for Gurnee</u>
Closing of Modification	\$34,563.32	\$9,212.33
11/1/10	6,592.67	4,606.17
12/1/10	6,592.67	4,606.17
1/1/11	6,592.67	4,606.17
2/1/11	6,592.67	4,606.17
3/1/11	6,592.67	4,606.17
4/1/11	6,592.67	4,606.17
5/1/11	6,592.67	4,606.17
6/1/11	6,592.67	4,606.17

Property of Cook County Clerk's Office