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Doc#: 1034833014 Fee: \$52.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/14/2010 08:31 AM Pg: 1 of 9

*Recorder's use only*

## SECOND MODIFICATION OF LOAN DOCUMENTS

THIS SECOND MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 31<sup>st</sup> day of October, 2010, by and between OAK LAWN PARTNERS, L.L.C., an Illinois limited liability company ("Mortgagor"), and BANK OF AMERICA, N.A., a national banking association, as successor by merger to LaSalle Bank National Association, its successors and assigns ("Lender").

### RECITALS:

A. Lender has heretofore made a loan ("Loan") to Northwest Partners, L.L.C., an Illinois limited liability company ("Northwest Partners"), and Northwest Indiana Properties, L.L.C., an Illinois limited liability company ("Northwest Indiana Properties"), and together with Northwest Partners, collectively, "Borrowers" and each a "Borrower", in the principal amount of Twelve Million and No/100 Dollars (\$12,000,000.00), as evidenced by that certain Substitute Secured Term Note dated March 31, 2007 executed by Borrowers jointly and severally and made payable to the order of Lender in the principal amount of the Loan (the "Note").

B. The Loan is secured by (i) that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Financing Statement dated May 4, 2001 from Mortgagor to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on July 12, 2001 as Document No. 0010616218 (as amended, restated, modified or supplemented and in effect from time to time, the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto (the

ADD 199594 - SALES KJ - 1/10/06

**This document prepared by and after recording return to:**

Diana Y. Tsai, Esq.  
Dykema Gossett PLLC  
10 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606

**Permanent Index Number:**

24-16-300-009  
24-16-300-056  
24-16-300-076

**Address of Property:**

10933 South Central Avenue  
Oak Lawn, Illinois

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“Property”); (ii) that certain Assignment of Rents and Leases dated May 4, 2001 from Mortgagor to Lender and recorded in the Recorder's Office on July 12, 2001 as Document No. 0010616219 (as amended, restated, modified or supplemented and in effect from time to time, the “Assignment of Rents”); and (iii) certain other loan documents (the Note, the Mortgage, the Assignment of Rents, the First Modification (as defined below), this Agreement, the Existing Guaranty (as defined below), as amended and restated by the Guaranty (as defined below) 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 that certain Guaranty dated April 2, 2007 made by Mortgagor in favor of Lender (the “Existing Guaranty”), which Existing Guaranty is being amended and restated concurrently herewith pursuant to that certain Amended and Restated Continuing and Unconditional Guaranty dated as of even date herewith made by Mortgagor in favor of Lender (as amended, restated, modified or supplemented and in effect from time to time, the “Guaranty”).

D. Certain of the Loan Documents were modified pursuant to that certain First Modification of Mortgage and Security Agreement and Assignment of Rents and Leases dated March 31, 2007 by and between Mortgagor and Lender and recorded with the Recorder's Office on April 11, 2007 as Document No. 0110133061 (the “First Modification”).

E. Mortgagor desires to amend the Loan Documents to, among other things, provide that the Mortgage and the other Loan Documents secure the Note, reaffirm the execution and delivery of the Mortgage and reaffirm the changes made in the First Modification.

## 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. Note. The “Note” referred to in the Mortgage and the other Loan Documents shall in all respects be deemed replaced by the Note.

2. Recitals of Mortgage. The first WHEREAS clause of the Mortgage is hereby amended and restated in its entirety to read as follows:

“WHEREAS, Northwest Partners, L.L.C., an Illinois limited liability company (“NWP”), and Northwest Indiana Properties, L.L.C., an Illinois limited liability company (“NIP”), are justly indebted to Mortgagee as evidenced by that certain Substitute Secured Term Note dated March 31, 2007 in the principal amount of Twelve Million and No/100 Dollars (\$12,000,000.00), as amended from time to time (as amended, restated, modified or supplemented and in effect from time to time, the “Note”), which is payable to the order of and has been delivered to Mortgagee, whereby NWP and NIP promise to pay the said principal amount, or so

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much thereof as may be advanced by the holder of the Note from time to time, together with interest thereon, from the time and at the rate set forth therein, as therein provided at the office of Mortgagee, or at such other place as may be designated in writing by the legal holder thereof, until March 31, 2014 (the "Maturity Date"), unless extended as provided therein or unless accelerated sooner pursuant to the terms thereof, at which time the principal sum secured hereby and all accrued interest thereon shall immediately become due and payable."

3. Swap Contracts. In addition to all other obligations secured thereby, the Mortgage and the other Loan Documents shall also be deemed to secure all obligations of Borrowers arising under any Swap Contract (as hereinafter defined) now or hereafter entered into between Borrowers or a Borrower and Lender. "Swap Contract" means any interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, securities puts, calls, collars, options or forwards or any combination of, or option with respect to, these or similar transactions now or hereafter entered into between Borrowers or a Borrower and Lender.

4. First Modification. The First Modification is hereby modified by deleting the reference to "Mortgage, Assignment of Rents and Leases Security Agreement and Financing Statement dated as of September 1, 2000, made by Mortgagor and Mortgagee and recorded in the office of the Cook County Recorder on December 29, 2000, as Document Number 0001021560" in the Recitals and replacing such reference with "Mortgage, Assignment of Rents and Leases, Security Agreement and Financing Statement dated May 4, 2001, made by Mortgagor in favor of Mortgagee and recorded in the office of the Cook County, Illinois Recorder on July 12, 2001, as Document Number 0010616218".

5. Reaffirmation and Confirmation of Loan Documents. Mortgagor is the mortgagor and the assignor under the terms of the Mortgage and hereby confirms that the Mortgage and the other Loan Documents to which it is a party are in full force and effect (except as expressly modified by this Agreement), ratifies and affirms its obligations under the Mortgage and the other Loan Documents and confirms that Mortgagor has granted to Lender a security interest in and to and mortgage lien upon the Premises (as defined in the Mortgage) and the other collateral set forth in the Mortgage to secure the Indebtedness (as defined in the Mortgage), under and pursuant to the Mortgage and the other Loan Documents. Mortgagor hereby expressly agrees that the lien on the Premises and the other collateral provided under the Loan Documents shall secure all of the Indebtedness (as defined in the Mortgage), including, without limitation, the Loan, and hereby reaffirms its grant of such security interest and lien to Lender for such purpose in all respects.

Without limitation of the foregoing, Mortgagor also hereby specifically reaffirms the changes made under the First Modification, except to the extent such changes are modified by or covered by this Agreement.

6. Representations and Warranties. Mortgagor hereby represents, covenants and warrants to Lender as follows:

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(a) The representations and warranties in 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 Note and the Mortgage) under the Note, the Mortgage or the other Loan Documents and Mortgagor does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrowers and Mortgagor, as applicable, 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 any Borrower, Mortgagor 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, no Borrower nor Mortgagor has any claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Each Borrower and Mortgagor is validly existing under the laws of the State of its formation or organization and each has the requisite power and authority to execute and deliver this Agreement (if a party hereto) 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 each Borrower and Mortgagor. This Agreement has been duly executed and delivered on behalf of Mortgagor.

7. Title Policy. As a condition precedent to the agreement contained herein, Mortgagor shall cause the applicable title insurance company to issue an endorsement to Lender's title insurance policy (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement 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.

8. 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 Mortgagor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Mortgagor and Lender have contributed substantially and materially to the preparation of this Agreement, and Mortgagor and Lender each acknowledges and waives any claim contesting the existence and the

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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 any Borrower nor Mortgagor nor shall privity of contract be presumed to have been established with any third party.

(d) Mortgagor 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 Borrowers, Mortgagor and Lender; and that all such prior understandings, agreements and representations are hereby notified 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 "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, 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 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 Mortgagor's obligations under this Agreement.

9. Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act. Lender hereby notifies Mortgagor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Mortgagor, which information includes the name and address of Mortgagor and such other information that will allow Lender to identify Mortgagor in accordance with the Act. In addition, Mortgagor shall (a) ensure that no person who owns a controlling interest in or

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otherwise controls Mortgagor or any subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

*[Remainder of page intentionally left blank; signature page follows]*


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

**LENDER:**


BANK OF AMERICA, N.A., a national banking association, as successor by merger to LaSalle Bank National Association

By:   
Name: Erin A. Frey  
Title: VICE PRESIDENT

**MORTGAGOR:**

OAK LAWN PARTNERS, L.L.C., an Illinois limited liability company

By: BP Capital Management, L.L.C., an Illinois limited liability company  
Its: Manager

By:   
Name: Daniel J. Kirk  
Title: Chief Financial Officer

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STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

I Barbara Trzebunia, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Eric M. Frey, Vice President of BANK OF AMERICA, N.A., a national banking association, as successor by merger to 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 21<sup>st</sup> day of October, 2010.



[Signature]  
Notary Public  
My Commission Expires: 05/02/12

STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF DuPage )

I Kathleen Hoffmann, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DANIEL J. KIRK, the Chief Financial Officer of BP CAPITAL MANAGEMENT, L.L.C., an Illinois limited liability company, the Manager of OAK LAWN PARTNERS, L.L.C., an Illinois limited liability company, 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 8<sup>th</sup> day of November, 2010.



[Signature]  
Notary Public  
My Commission Expires: 5-24-14



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## EXHIBIT A

### THE PROPERTY

#### PARCEL 1:

A TRACT OF LAND COMPRISING PART OF LOT 13 IN SCHOOL TRUSTEES' SUBDIVISION OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID TRACT OF LAND BEING ALL THAT PART OF SAID LOT 13 AS LIES WITHIN THE FOLLOWING DESCRIBED TRACT:

THE NORTH 100 FEET OF THE SOUTH 869 FEET OF THE EAST 250 FEET OF THE WEST 330 FEET OF THE SOUTHWEST 1/4 OF SAID SECTION 16, IN COOK COUNTY, ILLINOIS

#### PARCEL 2:

A TRACT OF LAND COMPRISING PART OF LOT 13 OF SCHOOL TRUSTEE SUBDIVISION OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID TRACT OF LAND BEING ALL THAT PART OF SAID LOT 13 AS LIES WITHIN THE FOLLOWING DESCRIBED TRACT:

THE NORTH 50 FEET OF THE SOUTH 919 FEET OF THE EAST 140 FEET OF THE WEST 220 FEET OF THE SOUTHWEST 1/4 OF SAID SECTION 16, IN COOK COUNTY, ILLINOIS

#### PARCEL 3:

A TRACT OF LAND COMPRISING PART OF LOT 13 IN SCHOOL TRUSTEE SUBDIVISION OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID TRACT OF LAND BEING ALL THAT PART OF SAID LOT 13 AS LIES WITHIN THE FOLLOWING DESCRIBED TRACT:

THE NORTH 440 FEET OF THE SOUTH 1119 OF THE EAST 30 FEET OF THE WEST 80 FEET OF THE SOUTHWEST 1/4 OF SECTION SAID 16, IN COOK COUNTY, ILLINOIS

Common Address: 10933 South Central Avenue  
Oak Lawn, Illinois

Permanent Index Numbers: 24-16-300-009  
24-16-300-056  
24-16-300-076