

UNOFFICIAL COPY

00771864

2000-10-03 09:36:02  
Cook County Recorder 99.50



LASALLE BANK NATIONAL ASSOCIATION, AS SUCCESSOR TO  
LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT  
DATED JUNE 10, 1970 AND KNOWN AS TRUST NUMBER 40940  
(Trustee)

and

WATER TOWER LLC, a Delaware limited liability company,  
as assignor  
(Borrower)

to

GERMAN AMERICAN CAPITAL CORPORATION, as assignee  
(Lender)

ASSIGNMENT  
OF LEASES AND RENTS

Dated: October 2, 2000  
Address: 845 North Michigan Avenue  
Water Tower Place -  
Commercial and Office Property  
Chicago, Illinois  
P.I.N.: 17-03-226-030  
County: Cook County

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Cadwalader, Wickersham & Taft  
100 Maiden Lane  
New York, New York 10038

Attention: Lawrence A. Ceriello, Esq.



near North 1000 1347 29 2 Jun

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") made as of the 2nd day of October, 2000, by LASALLE BANK NATIONAL ASSOCIATION ("Trustee"), as successor to LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 10, 1970 AND KNOWN AS TRUST NUMBER 40940 (hereinafter the "Trust") having an address at 135 South LaSalle Street, Chicago, IL 60603, and WATER TOWER LLC, a Delaware limited liability company, having an address at c/o Urban Shopping Centers, Inc., 900 North Michigan Avenue, Chicago, IL 60611-1580 ("Borrower") to GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, as assignee, having an address at 31 West 52<sup>nd</sup> Street, New York, New York 10019 ("Lender").

WITNESSETH:

WHEREAS, this Assignment is given to secure a loan in the principal sum of ONE HUNDRED EIGHTY-FIVE MILLION AND NO/100 DOLLARS (\$185,000,000.00) (the "Loan") by Lender to Borrower pursuant to that certain Loan Agreement by and between Lender and Borrower dated as of the date hereof (the "Loan Agreement") and evidenced by that certain Promissory Note dated the date hereof made by Borrower to Lender (the "Note"); and

WHEREAS, Borrower desires to further secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents.

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Assignment:

**ARTICLE 1 - ASSIGNMENT**

Section 1.1 **PROPERTY ASSIGNED.** Borrower and Trustee hereby absolutely and unconditionally assigns and grants to Lender the following property, rights, interests and estates, now owned, or hereafter acquired by Borrower:

(a) **LEASES.** All existing and future leases affecting the use, enjoyment, or occupancy of all or any part of that certain lot or piece of land, more particularly described in Exhibit A annexed hereto and made a part hereof, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (collectively, the "Property") and the right, title and interest of Borrower, its successors and assigns, therein and thereunder.

(b) **OTHER LEASES AND AGREEMENTS.** All other leases and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property or any portion thereof now or hereafter made, whether made before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") together with any extension, renewal or replacement of the same, this Assignment of other present and future leases and present and future agreements being effective without further or supplemental assignment. The leases described in Subsection 1.1(a) and the leases and other agreements described in this Subsection

1.1(b), together with all other present and future leases and present and future agreements and any extension or renewal of the same are collectively referred to as the "Leases".

(c) RENTS. All rents, additional rents, revenues, income, issues and profits arising from the Leases and renewals and replacements thereof and any cash or security deposited in connection therewith and together with all rents, revenues, income, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the use, enjoyment and occupancy of the Property whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "Rents").

(d) BANKRUPTCY CLAIMS. All of Borrower's and Trustee's claims and rights (the "Bankruptcy Claims") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code.

(e) LEASE GUARANTIES. All of Borrower's and Trustee's right, title and interest in and claims under any and all lease guaranties, letters of credit and any other credit support given by any guarantor in connection with any of the Leases (individually, a "Lease Guarantor", collectively, the "Lease Guarantors") to Borrower or Trustee (individually, a "Lease Guaranty", collectively, the "Lease Guaranties").

(f) PROCEEDS. All proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(g) OTHER. All rights, powers, privileges, options and other benefits of Borrower and/or Trustee as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation the immediate and continuing right to make claim for, receive, collect and receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt or the Other Obligations), and to do all other things which Borrower and/or Trustee or any lessor is or may become entitled to do under the Leases or the Lease Guaranties.

(h) ENTRY. The right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents.

(i) POWER OF ATTORNEY. Borrower's and Trustee's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in Section 3.1 of this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property.

(j) OTHER RIGHTS AND AGREEMENTS. Any and all other rights of Borrower and Trustee in and to the items set forth in subsections (a) through (i) above, and all amendments, modifications, replacements, renewals and substitutions thereof.

## ARTICLE 2 - TERMS OF ASSIGNMENT

Section 2.1 PRESENT ASSIGNMENT AND LICENSE BACK. It is intended by Borrower and Trustee that this Assignment constitute a present, absolute assignment of the Leases, Rents, Lease Guaranties and Bankruptcy Claims, and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 2.1, Lender grants to Borrower and Trustee a revocable license to collect, receive, use and enjoy the Rents and other sums due under the Lease Guaranties. Borrower and Trustee shall hold the Rents and all sums received pursuant to any Lease Guaranty, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Lender for use in the payment of such sums.

Section 2.2 NOTICE TO LESSEES. Effective upon the occurrence and during the continuance of an Event of Default, Borrower and Trustee hereby authorize and direct the lessees named in the Leases or any other future lessees or occupants of the Property and all Lease Guarantors to pay over to Lender or to such other party as Lender directs all Rents and all sums due under any Lease Guaranties upon receipt from Lender of written notice to the effect that Lender is then the holder of the Mortgage and that an Event of Default exists and is continuing, and to continue so to do until otherwise notified by Lender.

Section 2.3 INCORPORATION BY REFERENCE. All representations, warranties, covenants, conditions and agreements contained in the Loan Agreement and the other Loan Documents as same may be modified, renewed, substituted or extended are hereby made a part of this Assignment to the same extent and with the same force as if fully set forth herein.

## ARTICLE 3 - REMEDIES

Section 3.1 REMEDIES OF LENDER. Upon or at any time after the occurrence and during the continuance of an Event of Default, the license granted to Borrower and Trustee in Section 2.1 of this Assignment shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents and sums due under any Lease Guaranties, whether or not Lender enters upon or takes control of the Property. In addition, Lender may, at its option, without waiving such Event of Default, without regard to the adequacy of the security for the Debt, either in person or by agent, nominee or attorney, with or without bringing any action or proceeding, or by a receiver appointed by a court, dispossess Borrower, Trustee and their agents and servants from the Property, without liability for trespass, damages or otherwise and exclude Borrower, Trustee and their agents or servants wholly therefrom, and take possession of the Property and all books, records and accounts relating thereto and have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents and sums due under all Lease Guaranties, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as Lender may deem proper and may apply the Rents and sums received pursuant to any Lease Guaranties to the payment of the following in such order and proportion as Lender in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may deem necessary or desirable and all expenses of operating

and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Lender may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the Debt, together with all costs and reasonable attorneys' fees. In addition, upon the occurrence and during the continuance of an Event of Default, Lender, at its option, may (1) complete any construction on the Property in such manner and form as Lender deems advisable, (2) exercise all rights and powers of Borrower and Trustee, including, without limitation, the right to negotiate, execute, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums due under any Lease Guaranties, (3) either require Borrower and Trustee to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in actual possession of Borrower and Trustee or (4) require Borrower and Trustee to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower and Trustee may be evicted by summary proceedings or otherwise.

Section 3.2 OTHER REMEDIES. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Loan Agreement, the Note, or the other Loan Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect the Debt and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. To the extent permitted by applicable law, Borrower and Trustee hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or cross-claim of any nature whatsoever with respect to the obligations of Borrower and Trustee under this Assignment, the Loan Agreement, the Note, the other Loan Documents or otherwise with respect to the Loan in any action or proceeding brought by Lender to collect same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Loan Agreement, the Note, or any of the other Loan Documents (provided, however, that the foregoing shall not be deemed a waiver of Borrower's and Trustee's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Borrower's and Trustee's right to assert any claim which would constitute a defense, setoff, counterclaim or cross-claim of any nature whatsoever against Lender in any separate action or proceeding).

Section 3.3 OTHER SECURITY. Lender may take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Debt without prejudice to any of its rights under this Assignment.

Section 3.4 NON-WAIVER. The exercise by Lender of the option granted it in Section 3.1 of this Assignment and the collection of the Rents and sums due under the Lease Guaranties and the application thereof as herein provided shall not be considered a waiver of any default by Borrower under the Note, the Loan Agreement, the Leases, this Assignment or the other Loan Documents. The failure of Lender to insist upon strict performance of any term

# UNOFFICIAL COPY

hereof shall not be deemed to be a waiver of any term of this Assignment. Neither Trustee nor Borrower shall be relieved of Borrower's and Trustee's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or any other party to take any action to enforce any of the provisions hereof or of the Loan Agreement, the Note or the other Loan Documents, (b) the release regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Loan Agreement, the Note, or the other Loan Documents. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take any action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to enforce its rights under this Assignment. The rights of Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

Section 3.5 BANKRUPTCY. (a) Upon or at any time after the occurrence of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower and Trustee in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower and Trustee, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower or Trustee a petition under the Bankruptcy Code, and Borrower and/or Trustee, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower and Trustee shall give Lender not less than ten (10) days' prior notice of the date on which Borrower or Trustee shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower and Trustee within such ten-day period a notice stating that (i) Lender demands that Borrower or Trustee assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower or Trustee the notice described in the preceding sentence, Borrower or Trustee shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

## ARTICLE 4 - NO LIABILITY, FURTHER ASSURANCES

Section 4.1 NO LIABILITY OF LENDER. This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower or Trustee resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property after an Event of Default unless such loss is caused by the gross negligence, illegal act, fraud, willful misconduct or bad faith of Lender. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease

00771864

# UNOFFICIAL COPY

Guaranties or under or by reason of this Assignment and Borrower shall, and hereby agrees, to indemnify Lender for, and to hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under the Leases, any Lease Guaranties or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Lender by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any Lease Guaranties. Should Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by this Assignment and by the Mortgage and the other Loan Documents and Borrower shall reimburse Lender therefor immediately upon demand and upon the failure of Borrower so to do Lender may, at its option, declare all sums secured by this Assignment and by the Mortgage encumbering the Property and the other Loan Documents immediately due and payable. Notwithstanding the foregoing, Borrower shall not be liable to Lender under this Section 4.1 for such liability, loss or damage to which Lender may become subject to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property, including without limitation the presence of any Hazardous Substances (as defined in the Loan Agreement), or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

Section 4.2 NO MORTGAGEE IN POSSESSION. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower and Trustee.

Section 4.3 FURTHER ASSURANCES. Borrower and Trustee will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby assigned or intended now or hereafter so to be, or which Borrower and Trustee may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower and Trustee to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien and security interest hereof in and upon the Leases provided, however, that in no event shall any material terms of this Assignment be modified thereby or Borrower's or Trustee's liability hereunder increased, including, without limitation, the extent of recourse under the Loan Documents. Nothing contained in this Section 4.3 shall be deemed to create an obligation on the part of the Borrower to pay any costs and expenses incurred by Lender in connection with the Securitization or other sale or transfer of the Loan.

00771864

# UNOFFICIAL COPY

## ARTICLE 5 - MISCELLANEOUS PROVISIONS

Section 5.1 **CONFLICT OF TERMS.** In case of any conflict between the terms of this Assignment and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.

Section 5.2 **NO ORAL CHANGE.** This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 5.3 **GENERAL DEFINITIONS.** All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note, the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Loan Agreement, the word "Property" shall include any portion of the Property and any interest therein, the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorney's, paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 5.4 **INAPPLICABLE PROVISIONS.** If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

Section 5.5 **GOVERNING LAW.** (A) THIS ASSIGNMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY BORROWER AND TRUSTEE AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS ASSIGNMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND

00771864



# UNOFFICIAL COPY

ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS ASSIGNMENT AND THE NOTE, AND THIS ASSIGNMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER, TRUSTEE OR BORROWER ARISING OUT OF OR RELATING TO THIS ASSIGNMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND BORROWER AND TRUSTEE WAIVE ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER AND TRUSTEE HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT CT CORPORATION SYSTEMS, AT 111 EIGHTH AVENUE, NEW YORK, NEW YORK 10011 AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER, IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. SOLELY AS A COURTESY TO BORROWER, LENDER WILL USE REASONABLE EFFORTS TO

00771864

# UNOFFICIAL COPY

DELIVER A COPY OF ANY PROCESS SERVED UPON SAID AGENT TO BORROWER AT BORROWER'S ADDRESSES SET FORTH IN SECTION 10.6 OF THE LOAN AGREEMENT, PROVIDED THAT ANY FAILURE ON THE PART OF LENDER TO SO DELIVER ANY SUCH COPY SHALL IN NO MANNER LIMIT THE EFFECTIVENESS OF ANY PROCESS SERVED UPON SAID AGENT.

Section 5.6 TERMINATION OF ASSIGNMENT. Upon payment in full of the Debt or upon the exercise of certain release rights in accordance with Section 2.4 of the Loan Agreement, this Assignment shall become and be void and of no effect.

Section 5.7 NOTICES. All notices or other written communications hereunder to Borrower or Lender shall be delivered in accordance with Section 10.6 of the Loan Agreement. All notices or other written communications to Trustee shall be in writing and sent by certified or registered United States mail, postage prepaid, addressed as follows:

LaSalle Bank National Association  
135 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Land Trust Department  
Telephone: (312) 904-2472  
Facsimile: (312) 904-1563

A notice to Trustee shall be deemed to have been given when delivered or the first attempted delivery on a Business Day.

Section 5.8 WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THIS ASSIGNMENT, THE NOTE, OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

Section 5.9 EXCULPATION. Except as expressly set forth in this Section 5.9, the obligations of Borrower contained in this Assignment, the Note and all of the other Loan Documents shall be non-recourse to Borrower and its members, the SPC Party (if any) and its shareholders, and their respective officers, directors, shareholders, trustees, employees and Affiliates (each an "Exculpated Party") and subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in this Assignment, the Note or any of the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against any Exculpated Party except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under this Assignment, the Note and the other Loan Documents, or in the Property, the Rents, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically

00771864

# UNOFFICIAL COPY

provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Rents and in any other collateral given to Lender, and Lender, by accepting this Assignment, the Note and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower or any other Exculpated Party in any such action or proceeding under or by reason of or under or in connection with the Note or any other Loan Document. The provisions of this section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents, it being understood that Lender's recourse with respect to any such obligation shall in all instances be limited as provided in this section; (b) impair the right of Lender to name Borrower or the SPC Party (if any) or member of Borrower as a party defendant in any action or suit for foreclosure and sale under the Mortgage; (c) impair the right of Lender to obtain the appointment of a receiver, it being understood that such receiver's recourse shall in all instances be limited as provided in this section; (d) impair the enforcement of this Assignment it being understood that Lender's recourse with respect to the enforcement of such document shall in all instances be limited as provided in this section; (e) constitute a prohibition against Lender to seek a judgment against Borrower (but not against any other Exculpated Party) in order to fully realize the security granted by the Mortgage or to commence any other appropriate action or proceeding against Borrower (but not against any other Exculpated Party) in order for Lender to exercise its remedies against the Property it being understood that Lender's recourse with respect to its enforcement of any such remedy shall in all instances be limited as provided in this section; or (f) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, or expense incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following, it being understood that Lender's recourse shall in all instances be limited as provided in this section:

- (i) fraud or intentional misrepresentation by Borrower in connection with the Loan;
- (ii) the gross negligence or willful misconduct of Borrower;
- (iii) the intentional removal or disposal of any portion of the Property after and during the continuance of an Event of Default; or
- (iv) Borrower's indemnification of Lender set forth in Section 9.2 of the Loan Agreement.

Notwithstanding anything to the contrary in this Assignment, the Note or any of the Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim against Borrower (but not against any other Exculpated Party) for the full amount of the Debt secured by the Mortgage or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with the Loan Documents, and (B) the Debt shall be fully recourse to Borrower (but not against any other Exculpated Party) in the event that: (i) the first full monthly payment of principal and interest under the Note is not paid when due; (ii) Borrower fails, following five (5) days notice, to permit on-site inspections of the Property, or fails, following five (5) days notice, to provide financial information, or fails, following five

00771864

# UNOFFICIAL COPY

(5) days notice, to maintain its status as a single purpose entity, or fails, following five (5) days notice, to appoint, a new property manager upon the request of Lender after an Event of Default, each as required by, and in accordance with the terms and provisions of, the Loan Agreement and the Mortgage; (iii) Borrower fails to obtain Lender's prior written consent to any subordinate financing or other voluntary lien encumbering the Property as required by, and in accordance with the terms and provisions of the Loan Agreement and the Mortgage; (iv) Borrower fails to obtain Lender's prior written consent to any assignment, transfer, or conveyance of the Property or any interest therein as required by the Mortgage except as permitted by the Mortgage; or (v) Borrower, any Sponsor or the SPC Party (if any) willfully fails to direct tenants of the Property to make payments of Rents to the Lockbox Account as required by the Loan Agreement as the other Loan Documents. The expression "the Debt shall be fully recourse to Borrower" contained in subparagraph (B) in the preceding sentence shall be deemed to mean (i) that recourse shall extend to all of Borrower's assets as opposed to the assets of any other Exculpated Party and (ii) that for the purpose of such provision, a negative capital account of any constituent member in Borrower shall not be deemed to constitute an asset of Borrower.

Section 5.10 SUCCESSORS AND ASSIGNS. This Assignment shall be binding upon and inure to the benefit of Borrower, Trustee and Lender and their respective successors and assigns forever.

Section 5.11 HEADINGS, ETC. The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 5.12 EXCULPATION OF TRUSTEE. This Assignment, as well as certain other Loan Documents, is executed by Trustee not individually or personally, but solely as trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing herein or therein contained shall be construed as creating any liability on such trustee personally to perform any covenant, undertaking, representation or agreement, either express or implied, contained herein, all such personal liability of such trustee, if any, being expressly waived by each and every person now or hereafter claiming any right or security under this Agreement. Trustee hereby represents that it possesses full power and authority to execute and deliver this instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

00771864


# UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower and Trustee have executed this instrument the day and year first above written.

This instrument is executed by LASALLE BANK National Association, not personally but solely as Trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by LASALLE BANK National Association are undertaken by it solely as Trustee, as aforesaid, and not individually and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against LASALLE BANK National Association by reason of any of the terms, provisions, stipulations covenants and/or statements contained in this instrument

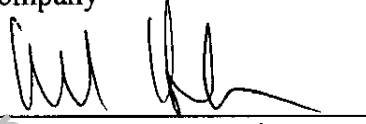
**Trustee:**

LASALLE BANK NATIONAL ASSOCIATION,  
as Trustee under Trust Agreement dated June 10, 1970 <sup>and not personally</sup> and known as Trust Number 40940

By:   
Name: Spring Alexander  
Title: Land Trust Administrator

**Borrower:**

WATER TOWER LLC, a Delaware limited liability company

By:   
Name: MICHAEL HILBORN  
Title: AUTHORIZED SIGNATORY

00771864

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS

)

) ss.:

COUNTY OF COOK

)

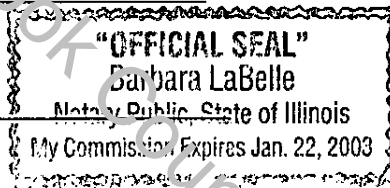
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT MICHAEL HILBOURN, AUTHORIZED SIGNATORY of Water Tower LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as AUTHORIZED SIGNATORY, of Water Tower LLC, a Delaware limited liability company, as his own free and voluntary act and as the free and voluntary act of Water Tower LLC, a Delaware limited liability company, as aforesaid, for the uses and purposes therein set forth.

Given under my hand and official seal, this 28<sup>th</sup> day of SEPT, 2000.

Barbara La Belle

Notary Public

My Commission Expires: \_\_\_\_\_



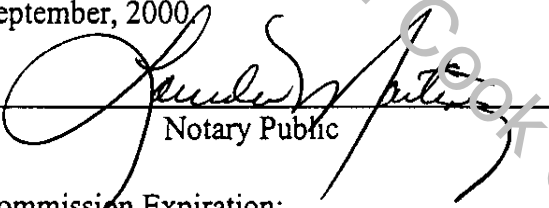
00771864

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) ss.:  
COUNTY OF COOK )

Before me, the undersigned Notary Public, duly commissioned and qualified in the County and State aforesaid to take acknowledgments, personally appeared Spring Alexander ~~XXX~~ to me known, who declared and acknowledged to me that ~~he/she/they~~ ~~are~~  the person  described in and who executed the foregoing instrument as <sup>Land Trust</sup> ~~Administrator~~ ~~President~~ and ~~Secretary~~ of LASALLE BANK NATIONAL ASSOCIATION, a national banking association and ~~he/she/they~~ acknowledge before me that ~~he/she/they~~ executed the same as such officer  in such capacity on the day and year therein mentioned, as the free and voluntary act and deed of said entity, for and on behalf of said entity and for the purpose therein set forth.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, this 28th day of September, 2000

  
\_\_\_\_\_  
Notary Public  
Commission Expiration: \_\_\_\_\_



00771864

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A

### PROPERTY DESCRIPTION

#### PARCEL 1:

LOT 1, IN MARBAN RESUBDIVISION OF PART OF BLOCK 20 IN CANAL TRUSTEE'S SUBDIVISION OF THE SOUTH FRACTIONAL  $\frac{1}{4}$  OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 30, 1975 AS DOCUMENT NUMBER 23339677 AND FILED WITH THE REGISTRAR OF TITLES OF DECEMBER 30, 1975 AS DOCUMENT NUMBER LR2848886.

#### PARCEL 2:

EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS RESERVED IN DEED FROM LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 10, 1970 AND KNOWN AS TRUST NUMBER 40940, TO KELVYN H. LAWRENCE, DATED MARCH 24, 1976, AND RECORDED MARCH 29, 1976 AS DOCUMENT NUMBER 23432348 AND FILED WITH THE REGISTRAR OF TITLES ON MARCH 29, 1976 AS DOCUMENT NUMBER LR2861198.

#### PARCEL 3:

EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS DESCRIBED BY THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ENTERED INTO AS OF APRIL 27, 1992, RECORDED MAY 1, 1992, AS DOCUMENT NUMBER 92299492 BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 10, 1970 AND KNOWN AS TRUST NUMBER 40940 OVER, UPON AND ACROSS THE FOLLOWING;

LOTS 2 AND 3, AND LOTS 19 THROUGH 29, BOTH INCLUSIVE, IN MARBAN RESUBDIVISION, BEING A SUBDIVISION OF A PART OF BLOCK 30 IN CANAL TRUSTEES' SUBDIVISION OF THE SOUTH FRACTIONAL  $\frac{1}{4}$  OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

00771864