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Cook County Recorder 37.00



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Document prepared  
by and after  
recording to be  
returned to:

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Duane Morris & Heckscher LLP  
227 West Monroe Street, Suite 3400  
Chicago, Illinois 60606

**FIRST MODIFICATION OF CONSTRUCTION MORTGAGE,  
ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT  
AND FIXTURE FINANCING STATEMENT**

*Handwritten signature/initials*

This **FIRST MODIFICATION OF CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT** (the "Agreement") is entered into as of the 31st day of December, 2001, with an effective date of October 31, 2001, by and among **FIRST BANK AND TRUST COMPANY OF ILLINOIS**, not personally, but solely as Trustee under Trust Agreement dated September 28, 2000, and known as Trust No. 10-2435 ("Trust"), **WOLFHAM STREET, LLC**, an Illinois limited liability company ("**Beneficiary**"; Trust and Beneficiary are sometimes hereinafter collectively referred to as "**Borrower**") and **FIRST BANK AND TRUST COMPANY OF ILLINOIS**, an Illinois banking corporation ("**Lender**").

**RECITALS**

WHEREAS, Borrower executed and delivered to Lender that certain Mortgage Note dated September 28, 2000, in the original principal amount of Eight Hundred Seventy-Five Thousand and No/100 Dollars (\$875,000.00) (the "**Original Note**"), which Original Note was modified by that certain First Mortgage Note Modification Agreement dated as of March 27, 2001 by and between Maker and Lender (the "**First Modification**"), that certain Second Mortgage Note Modification Agreement dated as of April 30, 2001 (the "**Second Modification**") and that certain Third Mortgage Note Modification Agreement dated as of September 17, 2001 (the "**Third Modification**"; the Original Note as modified by the First Modification, the Second Modification and the Third Modification is hereinafter referred to as the "**Note**"). The loan described in the Note (the "**Loan**") and Borrower's obligations thereunder are secured by, among other things, that certain Construction Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated September 28, 2000, from Borrower in favor of Lender, and recorded with the Recorder of

CHR99157.1

**BOX 158**

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Deeds of Cook County, Illinois on October 26, 2000, as Document No. 00839938 (the "Mortgage"). The Mortgage secures the real property described on **Exhibit A** attached hereto.

WHEREAS, FIRST BANK AND TRUST COMPANY OF ILLINOIS TRUST NO. 10-2398 and 1741 N. MAPLEWOOD, LLC, an Illinois limited liability company (collectively, "Maplewood"), executed and delivered to Lender that certain Promissory Note dated May 16, 2000, in the original principal amount of Six Hundred Thousand and No/100 Dollars (\$600,000.00) (as amended, the "Maplewood Note"), which Maplewood Note is secured, in part, by that certain Construction Mortgage dated May 16, 2000, from Maplewood in favor of Lender (as amended, the "Related Mortgage") and FIRST BANK AND TRUST COMPANY OF ILLINOIS TRUST NO. 10-2327 and ZGFLN, LLC, an Illinois limited liability company (collectively, "ZGFLN"; Maplewood and ZGFLN are sometimes hereinafter collectively referred to as "Related Borrower"), executed and delivered to Lender that certain Mortgage Note dated of even date herewith, in the original principal amount of Three Million Two Hundred Thirty Thousand and No/100 Dollars (\$3,230,000.00) (the "ZGFLN Note"; the Maplewood Note and the ZGFLN Note are hereinafter collectively referred to as the "Related Notes"); the Related Notes, the Related Mortgage and all other documents related thereto are hereinafter collectively referred to as the "Related Loan Documents"); and

WHEREAS, Borrower acknowledges and agrees that it receives benefit from disbursements under the Related Notes to Related Borrower; and

WHEREAS, Borrower now desires to modify the Mortgage to, among other things, (a) reflect that the maximum principal amount of the Note has been increased from Eight Hundred Seventy-Five Thousand and No/100 Dollars (\$875,000.00) to Nine Hundred Fifty-Five Thousand Eight Hundred and No/100 Dollars (\$955,800.00), (b) modify the Mortgage to reflect that a default under any of the Related Loan Documents shall be deemed a default under the Mortgage, and (c) reflect that the Mortgage now secures the Related Notes and the other Related Loan Documents; and

WHEREAS, Lender, the legal owner of the Note and of the liens securing the same, at the request of Borrower has agreed to modify the Mortgage as hereinafter provided

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower and Lender hereby agree to modify and renew the Mortgage as follows:

1. Representations and Warranties.

- a. Financial Statements. Borrower represents and warrants that all financial statements of Borrower heretofore delivered to Lender are true and correct representations of the financial condition of Borrower as of the date thereof, and there has been no

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material adverse change thereto except as indicated by financial statements subsequently delivered to Lender.

- b. Violation of Laws. Borrower is not in violation of any laws (including, without limitation, environmental laws and regulations) which could have any effect whatsoever upon the validity, performance or enforceability of any of the terms, covenants and conditions of the Note, the Mortgage, this Agreement, or any instrument executed in connection herewith or therewith. As used in this Agreement, the term "laws" shall include any and all laws, statutes, ordinances rules, regulations, orders, writs, injunctions and decrees.
- c. Taxes. Borrower has paid any and all federal, state, local and other taxes, assessments, fees and other governmental charges imposed upon Borrower or Borrower's assets which are due and payable.
- d. Disclosure of Adverse Facts. Borrower represents and warrants that there are no material adverse facts or conditions relating to the finances and business of Borrower which have not been related in writing to Lender.
- e. Lawful Authority. Borrower possesses all necessary and lawful authority and power to carry on its business and comply with the terms, covenants and conditions of the Note, the Mortgage, this Agreement, and any other instrument executed in connection herewith or therewith.
- f. No Defaults, Offsets, etc. Borrower represents and warrants that: (i) there are no events or circumstances currently existing which constitute a default under any of the loan documents evidencing the Loan or which would, upon the giving of notice and expiration of any applicable cure period, constitute a default under any of the loan documents evidencing the Loan; and (ii) there are no offsets, counterclaims or defenses with respect to the Note, the Mortgage, as modified hereby, or any of the other loan documents evidencing the Loan.
2. Default. Any default under or breach of the terms and provisions of this Agreement shall also constitute a default under the Mortgage, and any other security instrument executed in connection therewith or herewith.
3. Maximum Principal Amount. Borrower and Lender acknowledge that the maximum principal amount of the Note has been increased to Nine Hundred Fifty-Five Thousand Eight Hundred and No/100 Dollars (\$955,800.00). To effect this modification, any and all references to "Eight Hundred Seventy-Five Thousand and No/100 Dollars (\$875,000.00)" contained in the Mortgage are hereby deleted and replaced with the amount "Nine Hundred Fifty-Five Thousand Eight Hundred and No/00 Dollars (\$955,800.00)."

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4. Cross Default. Borrower and Lender agree that any default and/or event of default under the Related Note shall be a default and/or event of default under the Mortgage.
5. Cross Collateralization. Notwithstanding anything to the contrary contained in the Mortgage, Borrower agrees that (a) the Note shall be secured by, in addition to all other existing collateral, the Related Mortgage, and (b) the Mortgage and the other loan documents related thereto, as applicable, shall also secure payment and all other obligations under the Related Note.
6. Continuing Effect; Ratification. Except as expressly modified as contemplated herein, Borrower expressly ratifies the terms and provisions of the Mortgage and acknowledges and agrees that such terms and provisions shall continue in full force and effect and shall be binding on Borrower and Borrower's successors and assigns.
7. Costs and Expenses. Borrower shall pay any and all costs and expenses, including, without limitation, attorneys' fees and title charges, incurred by Lender in connection with or arising as a result of this Agreement, including, without limitation, the preparation and negotiation of this Agreement, and any other document required in connection herewith.
8. Final Agreement. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.
9. Conflicts. In the event of any conflict between the terms of this Agreement and any other document evidencing, securing or relating to the loan evidenced by the Note, the terms of this Agreement shall control.
10. Trustee Exculpation. This Agreement is executed by First Bank and Trust Company of Illinois (formerly known as First Bank and Trust Co., Palatine, Illinois), not personally, but solely as Trustee under and pursuant to that certain Trust Agreement hereinafter described and the Trustee does not obligate itself hereunder, anything herein contained to the contrary notwithstanding, to the performance of any of the terms, conditions and representations made and contained in the within instrument, it being specifically understood by any and all parties dealing with this instrument that said trustee has affixed its signature hereto as such Trustee by direction in behalf of the beneficiary or beneficiaries under the said trust without any intention of binding the said Trustee in its individual capacity. The Trustee has no knowledge of the factual matters herein contained and all agreements, conditions and

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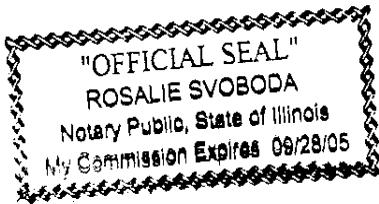
STATE OF ILLINOIS )

) SS.

COUNTY OF <sup>MCHENRY</sup> ~~COOK~~ )

I, ROSALIE SVOBODA, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ROBERT WALTER, personally known to me to be the EXEC. V.P. of **FIRST BANK AND TRUST COMPANY OF ILLINOIS**, is the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he has signed and delivered the said instrument as HIS free and voluntary act as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 31 day of December, 2001.



Rosalie SvoBoda

Notary Public

My commission expires: \_\_\_\_\_

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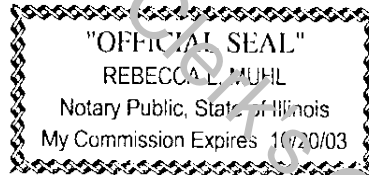
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Rebecca L. Muhl, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Neil Orloff personally known to me to be the member of **WOLFRAM STREET, LLC**, as such member, is the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he has signed and delivered the said instrument as his free and voluntary act as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of December, 2001.

Rebecca L. Muhl  
Notary Public

My commission expires: \_\_\_\_\_



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representations are made solely upon the direction in behalf of the beneficiary or beneficiaries as aforesaid, and no personal liability shall be asserted to be enforceable against said Bank by reason hereof or thereof, all such personal liability, if any, being expressly waived and released.

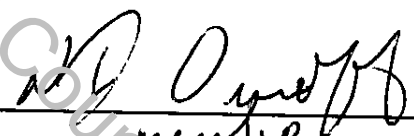
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**BORROWER:**

**FIRST BANK AND TRUST COMPANY OF ILLINOIS**, as Trustee aforesaid

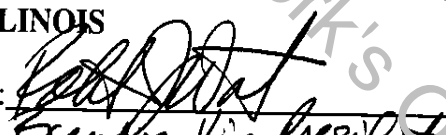
By: SEE RIDER CONTAINING TRUSTEE'S EXCULPATORY CLAUSE WHICH IS MADE A PART HEREOF.  
Its: \_\_\_\_\_

**WOLFRAM STREET, LLC**, an Illinois limited liability company

By:   
Its: member

**LENDER:**

**FIRST BANK AND TRUST COMPANY OF ILLINOIS**

By:   
Its: Executive Vice President

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UNIT 2 IN 1641 W. WOLFRAM CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED PARCEL OF REAL ESTATE:

LOT 31 IN W.A. HAYNE'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF LOTS 5 AND 3 AND THE WEST 21 FEET OF LOT 2 AND THE NORTH 60 FEET OF LOT 1 IN THE SUBDIVISION BY THE CIRCUIT COURT IN PARTITION OF THE SOUTH 5 ACRES OF THE EAST 1/4 OF THE SOUTH EAST 1/4 OF THE NORTH EAST 1/4 AND ALSO THE SOUTH 1/2 OF THE NORTH 5 ACRES OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF THE NORTH EAST 1/4, ALL IN SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

WHICH SURVEY IS ATTACHED TO THE DECLARATION OF CONDOMINIUM RECORDED 05-26-98 AS DOCUMENT NUMBER 28433360 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS.

P.I.N. NO.: 14-30-225-005 (AFFECTS UNDERLYING LAND)  
14-30-225-044-1002 (AFFECTS UNIT 2)

COMMON ADDRESS: UNIT 2, 1641 WEST WOLFRAM, CHICAGO, ILLINOIS

Legal Description

EXHIBIT A

