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Cook County Recorder 61.00



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## FIFTH NOTE AND MORTGAGE MODIFICATION AGREEMENT

7380035-02 W

**THIS FIFTH NOTE AND MORTGAGE MODIFICATION AGREEMENT** (this "Modification Agreement") is made as of the 30th day of March, 2002 by and among **LASALLE BANK NATIONAL ASSOCIATION**, not personally, but solely as Successor Trustee to American National Bank and Trust Company of Chicago, under Trust Agreement dated June 14, 1991 and known as Trust No. 113980-05 ("Mortgagor"), **SANDERS 2100 LIMITED PARTNERSHIP**, an Illinois limited partnership ("Beneficiary"), **BIG BEAR PROPERTIES, INC.**, a Delaware corporation ("General Partner") and **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, formerly known as LaSalle National Bank ("Mortgagee").

### RECITALS:

A. Mortgagee made a loan (the "Loan") to Mortgagor and Beneficiary in the original principal amount of Eleven Million Six Hundred Twenty-Five Thousand Dollars (\$11,625,000.00), and in order to evidence the Loan, Mortgagor and Beneficiary executed and delivered to Mortgagee a certain Mortgage Note dated June 25, 1992 in the original principal amount of Ten Million Nine Hundred Fifty Thousand Dollars (\$10,950,000.00) as amended by (i) a certain Note and Mortgage Modification Agreement (the "First Modification"), dated as of

### **THIS DOCUMENT WAS PREPARED BY AND AFTER RECORDING RETURN TO:**

Merle T. Cowin, Esq.  
Piper Rudnick  
203 North LaSalle Street  
Suite 1800  
Chicago, Illinois 60601

Permanent Index Nos.:  
04-18-301-019  
04-18-301-020

Property Address:  
2100 Sanders Road  
Northbrook, Illinois

**BOX 333-CTT**

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August 7, 1997, but effective as of July 1, 1997, among Mortgagor, Beneficiary and Mortgagee and recorded with the Office of the Cook County Illinois Recorder of Deeds (the "Recorder") on September 29, 1997 as Document No. 97719097, pursuant to which among other things, the original principal amount of said Mortgage Note was increased to Eleven Million Six Hundred Twenty-Five Thousand and No/100 Dollars (\$11,625,000.00), (ii) a certain Second Note and Mortgage Modification Agreement (the "Second Modification") dated as of July 1, 2000 among Mortgagor, Beneficiary and Mortgagee and recorded with the Recorder on September 5, 2000 as Document No. 00684046, and (iii) a certain Third Note and Mortgage Modification Agreement (the "Third Modification") dated as of January 1, 2001 among Mortgagor, Beneficiary, General Partner, J.K. Sanders, Inc., an Illinois corporation ("JK"), Hersch Klaff ("Klaff"), Eric Joss ("Joss") and Mortgagee and recorded with the Recorder on June 14, 2001 as Document No. 0010519746, and (iv) a certain Fourth Note and Mortgage Modification Agreement (the "Fourth Modification") dated as of April 30, 2001 among Mortgagor, Beneficiary, General Partner and Mortgagee, and recorded with the Recorder on June 14, 2001 as Document No. 0010519747 (said Mortgage Note, as so amended, is hereinafter referred to as the "Note").

B. To secure the Note, Mortgagor executed and delivered to Mortgagee a certain Mortgage dated June 25, 1992 encumbering real property in Cook County, Illinois legally described on Exhibit A attached hereto (the "Premises"), which Mortgage was recorded with the Recorder on July 6, 1992 as Document No. 92487469, and has been amended by the First Modification, the Second Modification, the Third Modification and the Fourth Modification (said Mortgage, as so amended, is hereinafter referred to as the "Mortgage").

C. To further secure the Note, Mortgagor and Beneficiary executed and delivered to Mortgagee a certain Assignment of Rents and Leases dated June 25, 1992 assigning to Mortgagee all of the rents, issues, profits and leases of and from the Premises, which Assignment of Rents and Leases was recorded with the Recorder on July 6, 1992 as Document No. 92487470, and has been amended by the First Modification, the Second Modification, the Third Modification and the Fourth Modification (said Assignment of Rents and Leases, as so amended, is hereinafter referred to as the "Assignment of Rents").

D. To further secure the Note, Beneficiary executed and delivered to Mortgagee a certain Letter of Credit Agreement dated June 25, 1992, as amended by the First Modification, the Second Modification, the Third Modification and the Fourth Modification (said Letter of Credit Agreement, as so amended, is hereinafter referred to as the "Letter of Credit Agreement") and delivered to Mortgagee an Irrevocable Letter of Credit No. LASB-214854 drawn on Bank of America ("Letter of Credit").

E. To further secure the Note, Beneficiary, General Partner, JK, Klaff and Joss executed and delivered to Mortgagee a certain Environmental Indemnity Agreement dated June 25, 1992, as amended by the First Modification, the Second Modification, the Third Modification and the Fourth Modification (said Environmental Indemnity Agreement, as so amended, is hereinafter referred to as the "Environmental Agreement").

F. To further secure the Note, Beneficiary, General Partner, JK, Klaff and Joss executed and delivered to Mortgagee a certain Certificate of Representations, Warranties and

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Covenants dated June 25, 1992, as amended by the First Modification, the Second Modification, the Third Modification and the Fourth Modification (said Certificate of Representations, Warranties and Covenants, as so amended, is hereinafter referred to as the "Certificate").

G. To further secure the Note, Beneficiary executed and delivered to Mortgagee a certain Deposit, Pledge and Security Agreement dated as of April 30, 2001 (the "Deposit Agreement").

H. Mortgagee is the owner and holder of the Note, the Mortgage, the Assignment of Rents, the Letter of Credit Agreement, the Letter of Credit, the Environmental Agreement, the Certificate, the Deposit Agreement and various other documents evidencing and securing the Loan (collectively, the "Loan Documents").

I. The Loan matures on April 1, 2002. Mortgagor and Beneficiary have requested that Mortgagee extend said maturity date to October 1, 2003 and also give Mortgagor and Beneficiary certain rights to further extend said maturity date for three consecutive one-year periods.

J. Mortgagee has agreed to give such consent, upon and subject to the terms, provisions and conditions hereinafter set forth.

**NOW THEREFORE**, in consideration of the recitals and the mutual covenants contained in this Modification Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor, Beneficiary, General Partner and Mortgagee hereby agree, stipulate and covenant as follows, notwithstanding anything to the contrary contained in the Loan Documents:

1. **AFFIRMATION OF RECITALS.** The recitals set forth above are true and correct and are incorporated herein by this reference.
2. **ACKNOWLEDGMENT OF DEBT.** Mortgagor, Beneficiary, General Partner and Mortgagee acknowledge that as of March 30, 2002, the principal balance due under the Note is \$11,469,296.
3. **NOTE.** The Note is hereby amended as follows:
  - (a) Paragraph 2.(A)(i) of the Note is amended by deleting the date "March 10, 2002" contained therein and substituting the following in lieu thereof:

"September 10, 2003, unless Maker timely and properly exercises the First Additional Extension Right, the Second Additional Extension Right or the Third Additional Extension Right (as each term is hereinafter defined), in which case the last regular monthly interest payment shall be due on the tenth day of September immediately preceding each of the First Additional Extended Maturity Date, the Second Additional Extended Maturity Date or

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the Third Additional Extended Maturity Date, (as each such term is hereinafter defined), as applicable.”

- (b) Paragraph 2.(A)(i) of the Note is further amended by deleting the words “Modified Maturity Date” contained therein and substituting the following in lieu thereof:

“October 1, 2003, unless Maker timely and properly exercises the First Additional Extension Right, the Second Additional Extension Right or the Third Additional Extension Right, in which case the final payment of interest shall be due on the First Additional Extended Maturity Date, the Second Additional Extended Maturity Date or the Third Additional Extended Maturity Date, as applicable.”

- (c) Paragraph 2.(A)(iii) of the Note is amended, effective July 1, 2002, by changing the references to the contract periods in subsections D and F thereof to 30 or 60 days.

- (d) The following is added at the end of Section 4(iii) of the Note:

“Commencing on April 10, 2002, and on the tenth day which is a Business Day of each month thereafter through and including September 10, 2003, (unless Maker timely and properly exercises the First Additional Extension Right, the Second Additional Extension Right or the Third Additional Extension Right, in which case such date shall be deemed to be the 10<sup>th</sup> day of September, immediately preceding each of the First Additional Extended Maturity Date, the Second Additional Extended Maturity Date or the Third Additional Extended Maturity Date, as applicable), Maker shall make a monthly payment to Lender in an amount equal to the sum of (x) all accrued and unpaid interest on the then outstanding principal balance of this Note, plus (ii) a principal payment in the amount of \$11,150.”

- (e) Section 4(iv) of the Note is amended by deleting the date “April 1, 2002” contained in the last sentence thereof and substituting the date “October 1, 2003” in lieu thereof.

- (f) The following provisions are hereby added as Sections 4(v), 4(vi) and 4(vii) of the Note:

“(v) Notwithstanding the foregoing, Maker shall have the right (the “First Additional Extension Right”) to extend the Modified Maturity Date to October 1, 2004 (the “First Additional Extended Maturity Date”), upon and subject to the following terms, conditions and provisions.

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- (a) Maker shall give Lender a written notice (the "First Additional Extension Notice") of its intent to so extend the Modified Maturity Date to the First Additional Extended Maturity Date not less than thirty (30) days and not more than ninety (90) days prior to the Modified Maturity Date;
- (b) On the date on which Maker delivers the First Additional Extension Notice and on the Modified Maturity Date, no Event of Default or event or circumstance which with the giving of notice, the passage of time, or both, could constitute an Event of Default exists under this Note, the Mortgage or any of the other Loan Documents (as hereinafter defined);
- (c) Concurrently with the delivery of the First Additional Extension Notice, Maker shall pay to Lender an extension fee in an amount equal to one-eighth of one percent (1/8%) of the then outstanding principal balance of this Note;
- (d) No material adverse change shall have theretofore occurred in the financial condition of Maker;
- (e) On the date on which maker delivers the First Additional Extension Notice and on the Modified Maturity Date, not less than eighty-five (85%) of the rentable square feet contained in the Premises shall be leased to bona fide third party tenants pursuant to leases entered into by Maker in compliance with the terms, provisions and requirements of the Loan Documents ("Leases") and that are not then in default and not less than sixty percent (60%) of the rentable square feet contained in the Premises shall be physically occupied by bona fide third party tenants under Leases that are not then in default;
- (f) Lender shall have determined that the ratio of Net Operating Income (as hereinafter defined) for the one-year period following the Modified Maturity Date to Debt Service (as hereinafter defined) for said one year period shall be equal to or greater than 1.35 to 1.0. For purposes of this Note, the following definitions shall apply:
- (1) "Net Operating Income" for any one-year period shall mean (A) all rental income (including minimum rent, additional rent, escalation and pass through payments, but excluding security deposits) scheduled to be paid to Maker during the applicable period arising from Leases

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which are in effect as of the first day of the applicable period and are not then in default, less (B) 103% of the actual operating expenses, real estate taxes and insurance premiums incurred by Maker during the twelve-month period immediately preceding the commencement of the applicable period in connection with the leasing, management, operation, maintenance and repair of the Premises, but excluding (w) non-cash expenses, such as depreciation and amortization costs, and (x) state and federal income taxes, (y) the non-current portion of capital expenditures as determined in accordance with generally accepted accounting principles, and (z) debt service payable on this Note; less (C) an annual structural reserve equal to \$.15 per rentable square foot contained in the Premises; and

(2) "Debt Service" for the applicable period shall mean an amount equal to the principal and interest payments that would be due during the applicable period on a loan in the principal amount equal to the outstanding principal balance of this Note as of the first day of the applicable period bearing interest at an annual interest rate equal to the greater of (x) seven and one half percent (7.5%), or (y) three percent (3%), plus the annual rate being paid by ten year United States Treasury Notes, as determined by Lender as of the first day of the applicable period, and having a twenty (20) year amortization period; and

(g) All terms and provisions of this Note shall remain in full force and effect during the period from and after the Modified Maturity Date to and including the First Additional Extended Maturity Date; provided, however, and notwithstanding the foregoing, in the event that the conditions described in subsections (e) and (f) above are not both satisfied, Maker may nonetheless exercise the First Additional Extension Right if prior to the First Additional Extended Maturity Date, Maker makes a principal payment to Lender equal to the greater of (x) \$1,000,000, or (y) an amount necessary to reduce the outstanding principal balance of this Note such that following such payment, Lender shall determine that the ratio of the Net Operating Income for the one-year period following the Modified Maturity Date to Debt Service for said one-year period shall be equal to or greater than 1.25 to 1.0.

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(vi) Notwithstanding the foregoing, provided that Maker timely and properly exercised the Second Additional Extension Right and all conditions contained in subsection (v) above relating to the extension of the First Additional Extended Maturity Date to the Second Additional Extended Maturity Date were timely and properly satisfied, Maker shall have the right (the "Second Additional Extension Right") to extend the Second Additional Extended Maturity Date to October 1, 2005 (the "Second Additional Extended Maturity Date"), upon and subject to the following terms, conditions and provisions:

- (a) Maker shall give Lender a written notice (the "Second Additional Extension Notice") of its intent to so extend the First Additional Extended Maturity Date to the Second Additional Extended Maturity Date not less than thirty (30) days and not more than ninety (90) days prior to the First Additional Extended Maturity Date;
- (b) On the date on which Maker delivers the Second Additional Extension Notice and on the First Additional Extended Maturity Date, no Event of Default or event or circumstance which with the giving of notice, the passage of time, or both, could constitute an Event of Default exists under this Note, the Mortgage or any of the other Loan Documents;
- (c) Concurrently with the delivery of the Second Additional Extension Notice, Maker shall pay to Lender an extension fee in an amount equal to one-eighth of one percent (1/8%) of the then outstanding principal balance of this Note;
- (d) No material adverse change shall have theretofore occurred in the financial condition of Maker;
- (e) On the date on which maker delivers the Second Additional Extension Notice and on the First Additional Extended Maturity Date, not less than eighty-five (85%) of the rentable square feet contained in the Premises shall be leased to bona fide third party tenants pursuant to Leases that are not then in default and not less than sixty percent (60%) of the rentable square feet contained in the Premises shall be physically occupied by bona fide third party tenants under Leases that are not then in default;
- (f) Lender shall have determined that the ratio of Net Operating Income for the one-year period following the First Additional Extended Maturity Date to Debt Service



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for said one year period shall be equal to or greater than 1.35 to 1.0; and

- (g) All terms and provisions of this Note shall remain in full force and effect during the period from and after the First Additional Extended Maturity Date to and including the Second Additional Extended Maturity Date; provided, however, and notwithstanding the foregoing, in the event that the conditions described in subsections (e) and (f) above are not both satisfied, Maker may nonetheless exercise the Second Additional Extension Right if prior to the Second Additional Extended Maturity Date, Maker makes a principal payment to Lender equal to the greater of (x) \$1,000,000, or (y) an amount necessary to reduce the outstanding principal balance of this Note such that following such payment, Lender shall determine that the ratio of the Net Operating Income for the one-year period following the First Additional Extended Maturity Date to Debt Service for said one-year period shall be equal to or greater than 1.25 to 1.0; and

(vii) Notwithstanding the foregoing, provided that Maker timely and properly exercised the Second Additional Extension Right and all conditions contained in subsection (vi) above relating to the extension of the First Additional Extended Maturity Date to the Second Additional Extended Maturity Date were timely and properly satisfied, Maker shall have the right (the "Second Additional Extension Right") to extend the Second Additional Extended Maturity Date to October 1, 2006 (the "Third Additional Extended Maturity Date"), upon and subject to the following terms, conditions and provisions:

- (a) Maker shall give Lender a written notice (the "Third Additional Extension Notice") of its intent to so extend the Modified Maturity Date to the Third Additional Extended Maturity Date not less than thirty (30) days and not more than ninety (90) days prior to the Second Additional Extended Maturity Date;
- (b) On the date on which Maker delivers the Third Additional Extension Notice and on the Second Additional Extended Maturity Date, no Event of Default or event or circumstance which with the giving of notice, the passage of time, or both, could constitute an Event of Default exists under this Note, the Mortgage or any of the other Loan Documents;

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- (c) Concurrently with the delivery of the Third Additional Extension Notice, Maker shall pay to Lender an extension fee in an amount equal to one-eighth of one percent (1/8%) of the then outstanding principal balance of this Note;
- (d) No material adverse change shall have theretofore occurred in the financial condition of Maker;
- (e) On the date on which maker delivers the Third Additional Extension Notice and on the Second Additional Extended Maturity Date, not less than eighty-five (85%) of the rentable square feet contained in the Premises shall be leased to bona fide third party tenants pursuant to Leases that are not then in default and not less than sixty percent (60%) of the rentable square feet contained in the Premises shall be physically occupied by bona fide third party tenants under Leases that are not then in default;
- (f) Lender shall have determined that the ratio of Net Operating Income for the one-year period following the Second Additional Extended Maturity Date to Debt Service for said one year period shall be equal to or greater than 1.35 to 1.0, and
- (g) All terms and provisions of this Note shall remain in full force and effect during the period from and after the Second Additional Extended Maturity Date to and including the Third Additional Extended Maturity Date; provided, however, and notwithstanding the foregoing, in the event that the conditions described in subsections (e) and (f) above are not both satisfied, Maker may nonetheless exercise the Third Additional Extension Right if prior to the Third Additional Extended Maturity Date, Maker makes a principal payment to Lender equal to the greater of (x) \$1,000,000, or (y) an amount necessary to reduce the outstanding principal balance of this Note such that following such payment, Lender shall determine that the ratio of the Net Operating Income for the one-year period following the Second Additional Extended Maturity Date to Debt Service for said one-year period shall be equal to or greater than 1.25 to 1.0."
- (g) All references contained in the Note to the Mortgage or any other Loan Document shall be deemed to refer to the Mortgage or such other Loan Document, as amended by this Modification Agreement.

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4. **MORTGAGE.** As of the Effective Date, the Mortgage is hereby amended as follows:
- (a) Recital A of the Mortgage is amended by deleting the date "April 1, 2002" contained therein and substituting the following in lieu thereof:
- "October 1, 2003, unless Mortgagor timely and properly exercises the extension rights provided for in the Note, in which such case, said maturity date may be extended to October 1, 2004, October 1, 2005 or October 1, 2006."
- (b) All references contained in the Mortgage to the Note or any other Loan Document shall be deemed to refer to the Note or such other Loan Document, as amended by this Modification Agreement.
5. **OTHER LOAN DOCUMENTS.** The other Loan Documents are modified as follows:
- (a) Any reference to the maturity date of the Note is hereby changed to October 1, 2003, subject to Borrower's right to extend said maturity date to October 1, 2004, October 1, 2005 or October 1, 2006, to the extent and subject to the terms, provisions and conditions contained in the Note.
- (b) The definition of any Loan Document appearing in any other Loan Document is hereby amended to refer to such other Loan Document, as amended by this Modification Agreement.
6. **TITLE INSURANCE; ENTITY ORGANIZATION.** Concurrently with the execution and delivery of this Modification Agreement (and, as a condition precedent to the effectiveness of this Modification Agreement), Mortgagor and Beneficiary shall provide Mortgagee with: (a) an endorsement to Mortgagee's Title Insurance Policy No. 7380035 dated July 7, 1992 issued by Chicago Title Insurance Company ("Mortgagee's Title Policy"), which shall guarantee as of the date of the recording of this Modification Agreement, that there are no objections to title other than (i) the objections to title included in Mortgagee's Title Insurance Policy, and (ii) general real estate taxes not presently due or payable; (b) a certificate that the copy of Beneficiary's partnership agreement delivered to Mortgagee in connection with the Fourth Modification has not been further modified or amended; (c) evidence that this Modification Agreement has been duly authorized on behalf of Beneficiary and General Partner; (d) certificates of good standing for Beneficiary issued by the Secretary of State of the State of Illinois and for General Partner issued by the Secretary of State of the States of Delaware and Illinois; (e) an opinion of counsel for Beneficiary and General Partner in form and substance acceptable to Lender; and (f) such other documents as Mortgagee shall reasonably request. Lender agrees that upon execution and delivery of this Modification Agreement and all of the other documents described

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in this Paragraph 6 and the payment of Lender of the principal paydown, extension fees and costs, fees, expenses and other charges described Paragraph 7 below, Lender will release to Beneficiary the Letter of Credit and the funds held by Lender pursuant to the Deposit Agreement.

7. **PRINCIPAL PAYDOWN; EXTENSION FEES; MORTGAGEE'S EXPENSES.**

(a) Concurrently with the execution and delivery of this Modification Agreement (and as a condition precedent to the effectiveness of this Modification Agreement), Mortgagor and Beneficiary shall pay to Mortgagee (i) the sum of \$3,000,000, which shall be applied to reduce the outstanding principal balance of the Note to \$8,469,296, (ii) a loan extension fee in the amount of \$42,347, and (iii) an upfront fee for the First Additional Extension Right, the Second Additional Extension Right and the Third Additional Extension Right in the amount of \$31,760.

(b) Mortgagor and Beneficiary agree to pay all reasonable costs, fees and expenses (including but not limited to Mortgagee's legal fees) incurred by Mortgagee in connection with the preparation of this Modification Agreement and/or the implementation of the additional disbursements contemplated hereunder. Such of the foregoing as are incurred prior to the execution and delivery of this Modification Agreement shall be paid concurrent with such execution and delivery. All other fees, costs and expenses shall be paid within ten (10) business days after notice from Mortgagee to Beneficiary of the amount due and the reason therefor.

8. **DEFAULT.** If there is a default in any provision of this Modification Agreement then Mortgagee shall be entitled to all rights and remedies provided under the Mortgage and the other Loan Documents.

9. **NOTICE.** Any notice required to be delivered herein shall be delivered in accordance with the terms of the Mortgage.

10. **GOVERNING LAW.** This Modification Agreement shall be construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles.

11. **CONSTRUCTION.** This Modification Agreement shall not be construed more strictly against Mortgagee merely by virtue of the fact that the same has been prepared by Mortgagee or its counsel. Mortgagor, Beneficiary, General Partner and Mortgagee each acknowledge and waive any claim contesting the existence and the adequacy of the consideration given by any of the other parties hereto in entering into this Modification Agreement.

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12. **REPRESENTATIONS AND WARRANTIES.** Mortgagor, Beneficiary, and General Partner hereby represent and covenant and Beneficiary and General Partner warrant to Mortgagee as follows:
- (a) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Mortgagor, Beneficiary and General Partner do 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.
  - (b) The Loan Documents are in full force and effect and, following the execution and delivery of this Modification Agreement, they continue to be the legal, valid and binding obligations of Mortgagor, Beneficiary and General Partner, as applicable, enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.
  - (c) There has been no material adverse change in the financial condition of Beneficiary or General Partner from the date of the most recent financial statement of each such party received by Mortgagee.
  - (d) Each of Beneficiary and General Partner is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Modification Agreement and to perform its respective obligations under 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 Beneficiary and General Partner. This Modification Agreement has been duly executed and delivered on behalf of Mortgagor, Beneficiary and General Partner.
13. **ENTIRE AGREEMENT.** Mortgagor, Beneficiary, General Partner and Mortgagee each acknowledge that there are no other agreements or representations, either oral or written, express or implied, not embodied in this Modification Agreement or the Loan Documents, which, together, represent a complete integration of all prior and contemporaneous agreements and understandings of Mortgagor, Beneficiary, General Partner and Mortgagee.
14. **BENEFIT.** Except as provided herein, this Modification Agreement shall be binding upon and shall inure to the benefit of Mortgagor, Beneficiary, General Partner and Mortgagee, and their respective successors, permitted assigns, grantees, heirs, executors, personal representatives, and administrators.
15. **RATIFICATION.** Except as herein expressly modified, the Loan Documents shall remain in full force and effect, and all of the terms and provisions of the

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Loan Documents, as herein modified, are hereby ratified, confirmed, and reaffirmed by Mortgagor, Beneficiary and General Partner. Mortgagor, Beneficiary and General Partner further ratify and confirm that the failure of JK, Klaff and Joss to be parties to this Modification Agreement shall not in any way affect, impair or limit the respective obligations and liabilities of Mortgagor, Beneficiary and General Partner under this Modification Agreement or the Loan Documents to which they are parties. Mortgagor, Beneficiary and General Partner reaffirm, confirm and reconfirm all of the representations, warranties and covenants made by each at the time of the initial funding of the Loan, except for changes in factual circumstances that have been disclosed to Mortgagee.

16. **PRIORITY OF MORTGAGE.** All of the Premises shall remain in all respects subject to the lien, charge and encumbrance of the Mortgage and the Assignment of Rents, as herein modified, and nothing herein contained and nothing done pursuant hereto, shall affect the lien, charge or encumbrance of the Mortgage and the Assignment of Rents, as herein modified, or the priority thereof with respect to other liens, charges, encumbrances or conveyances, or release or affect the liability of any party or parties whomsoever who may now or hereafter be liable under or on account of the Loan Documents.
17. **CONSENT TO MODIFICATION.** Mortgagor, Beneficiary and General Partner acknowledge that they have thoroughly read and reviewed the terms and provisions of this Modification Agreement and are familiar with same, that the terms and provisions contained herein are clearly understood by them and have been fully and unconditionally consented to by them, and that Mortgagor, Beneficiary and General Partner have had full benefit and advice of counsel of their own selection, or the opportunity to obtain the benefit and advice of counsel of their own selection, in regard to understanding the terms, meaning and effect of this Modification Agreement, and that this Modification Agreement has been entered into by Mortgagor, Beneficiary and General Partner, freely, voluntarily, with full knowledge, and without duress, and that in executing this Modification Agreement, Mortgagor, Beneficiary and General Partner are relying on no other representations either written or oral, express or implied, made to Mortgagor, Beneficiary or General Partner, by any other party hereto, and that the consideration received by Mortgagor, Beneficiary and General Partner hereunder has been actual and adequate.
18. **RELEASE.** As additional consideration of the modification of the Loan Documents by Mortgagee as herein set forth, Mortgagor, Beneficiary and General Partner hereby release and forever discharge Mortgagee, its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors and assigns and all persons, firms, corporations, and organizations on its behalf from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which Mortgagor, Beneficiary or General Partner may now have or claim to have against Mortgagee, as of the date hereof, whether presently known or unknown, and of every nature and extent whatsoever on

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account of or in any way touching, concerning, arising out of or founded upon the Loan Documents, as herein modified, including but not limited to, all such loss or damage of any kind heretofore sustained, or that may arise as a consequence of the dealings between the parties up to and including the date hereof. This agreement and covenant on the part of Mortgagor, Beneficiary and General Partner is contractual, and not a mere recital, and the parties hereto acknowledge and agree that no liability whatsoever is admitted on the part of any party, except the indebtedness herein stated under the Loan Documents, as herein modified, and that all agreements and understandings between Mortgagor, Beneficiary, General Partner and Mortgagee are expressed and embodied in the Loan Documents, as herein modified.

19. **COUNTERPARTS.** This Modification Agreement may be executed in several counterparts, each of which shall, for all purposes, be deemed an original and all of such counterparts, taken together, shall constitute one and the same Modification Agreement, even though all of the parties hereto may not have executed the same counterpart of this Modification Agreement.
20. **DEFINITION OF TERMS.** All capitalized terms not expressly defined in this Modification Agreement shall bear the same respective definitions herein as they bear in the Loan Documents, as herein modified.
21. **EXCULPATION.** This Modification Agreement is executed by Mortgagor, not personally, but as Trustee aforesaid, and it is expressly understood and agreed that nothing herein contained shall be constituted as creating any liability on Mortgagor, personally, to pay the Note or any interest that may accrue thereon, or any indebtedness accruing under the Mortgage, or to perform any covenant either express or implied contained in the Mortgage, all such liability, if any, being expressly waived by the Mortgagee and by every person now or hereafter claiming any right or security in the Mortgage, and that so far as Mortgagor, and its successors, personally, are concerned, the Mortgagee and the holder or holders of the Note shall look solely to any one or more of (a) the Premises, by the enforcement of the lien created by the Mortgage or (b) action to enforce the personal liability of any indemnitor, obligor, guarantor or co-maker or (c) enforcement of any other security or collateral securing the Loan.

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IN WITNESS WHEREOF, this instrument has been executed by the parties hereto in manner and form sufficient to bind them, as of the day and year first above written.

## MORTGAGOR:

LASALLE BANK NATIONAL ASSOCIATION,  
not personally but solely as Successor Trustee, as  
aforesaid

By: Kathleen E. Shields  
Name: KATHLEEN E. SHIELDS  
Title: Trust Officer

## BENEFICIARY:

SANDERS 2100 LIMITED PARTNERSHIP, an  
Illinois limited partnership

By: Big Bear Properties, Inc., a Delaware  
corporation, General Partner

By: William R. Lewellen, Jr.  
Name: William R. Lewellen, Jr.  
Title: President

## GENERAL PARTNER:

BIG BEAR PROPERTIES, INC., a Delaware  
corporation

By: William R. Lewellen, Jr.  
Name: William R. Lewellen, Jr.  
Title: President

## MORTGAGEE:

LASALLE BANK NATIONAL ASSOCIATION

By: Nicole A. Olenic  
Name: Nicole A. Olenic  
Title: CBO

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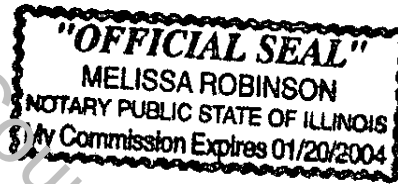
STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, MELISSA ROBINSON, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that KATHLEEN E. SHIELDS, personally known to me to be the Trust Officer of LASALLE NATIONAL ASSOCIATION, a national banking association, as Trustee, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that as such Trust Officer, he/she signed and delivered the said Instrument as his/her free and voluntary act and as the free and voluntary act and deed of said Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 25<sup>th</sup> day of June, 2002.

Melissa Robinson  
Notary Public

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



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# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, LINDA L. ROEMER, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that William R. Lewellen, Jr., the President of Big Bear Properties, Inc., a Delaware corporation, the general partner of 2100 Sanders Limited Partnership, an Illinois limited partnership ("Partnership"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, 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 said corporation, on behalf of the Partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of JUNE, 2002.

Linda L. Roemer  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
7-1-2004



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# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, LINDA L. ROEMER, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that William R. Lewellen, Jr., the President of Big Bear Properties, Inc., a Delaware corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, 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 said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of June, 2002.

Linda L. Roemer  
Notary Public

My Commission Expires:

7-1-2004



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# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, MARIA T. ESPARZA, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Nicole A. Olenick, personally known to me to be the CBO of LASALLE BANK NATIONAL ASSOCIATION, national banking association, personally known to me to be the same person whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that as such CBO he/she signed and delivered the said Instrument as his/her free and voluntary act and as the free and voluntary act and deed of said banking association, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 27th day of JUNE, 2002.

Maria T. Esparza  
Notary Public

My Commission Expires:



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# UNOFFICIAL COPY

EXHIBIT A

## PARCEL 1:

THAT PART OF LOTS 4 AND 5 IN COUNTY CLERK'S DIVISION IN SECTION 18, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE CENTER OF SANDERS ROAD 591.84 FEET SOUTHERLY (MEASURED ALONG THE CENTER LINE OF SANDERS ROAD) OF THE INTERSECTION OF SAID CENTER LINE WITH THE NORTH LINE OF LOT 4; THENCE WESTERLY AT RIGHT ANGLES TO THE CENTER LINE OF SANDERS ROAD 446.33 FEET TO THE SOUTHERLY CORNER OF LOT 6; THENCE SOUTH ON THE WEST LINE OF LOT 5, 317.23 FEET, MORE OR LESS, TO A POINT 361.40 FEET NORTH OF THE SOUTHWEST CORNER OF LOT 5; THENCE EAST ON A LINE 361.40 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF LOT 5, 264.0 FEET TO A LINE BETWEEN LOTS 4 AND 5; THENCE EAST ON A LINE 361.40 FEET NORTH OF THE SOUTH LINE OF LOT 4, 227.63 FEET TO THE CENTER LINE OF SANDERS ROAD; THENCE NORTHERLY ALONG THE CENTER OF SAID ROAD 375.98 FEET TO THE PLACE OF BEGINNING, (EXCEPTING THEREFROM THAT PART THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE CENTER LINE OF SANDERS ROAD 591.84 FEET SOUTHERLY OF THE INTERSECTION OF SAID CENTER LINE WITH THE NORTH LINE OF AFORESAID LOT NO. 4, THENCE WESTERLY AT RIGHT ANGLES TO THE CENTER LINE OF SANDERS ROAD 150.0 FEET TO A POINT; THENCE WITH AN ANGLE OF 90 DEGREES 00 MINUTES TO THE LEFT FROM THE PRECEDING COURSE EXTENDED 92.78 FEET; THENCE WITH AN ANGLE OF 90 DEGREES 00 MINUTES TO THE LEFT FROM THE PRECEDING COURSE EXTENDED 75.00 FEET; THENCE WITH AN ANGLE OF 79 DEGREES 39 MINUTES 30 SECONDS TO THE RIGHT FROM THE PRECEDING COURSE EXTENDED 139.26 FEET; THENCE WITH AN ANGLE OF 79 DEGREES 39 MINUTES 30 SECONDS TO THE LEFT FROM THE PRECEDING COURSE EXTENDED 50.00 FEET TO A POINT, SAID POINT BEING IN THE CENTER LINE OF SANDERS ROAD; THENCE NORTHERLY ALONG THE CENTER LINE OF SAID SANDERS ROAD 229.78 FEET TO THE PLACE OF BEGINNING) ALL IN COOK COUNTY, ILLINOIS

## PARCEL 2:

THAT PART OF LOTS 4 AND 5 IN COUNTY CLERK'S DIVISION OF SECTION 18, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE CENTER LINE OF SANDERS ROAD WHICH IS THE POINT OF INTERSECTION OF SAID CENTER LINE OF SANDERS ROAD AND A LINE 192.72 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOTS 4 AND 5; THENCE WESTERLY ON SAID LINE 192.72 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOTS 4 AND 5, TO THE WEST LINE OF SAID LOT 5; THENCE NORTHERLY ALONG SAID WEST LINE OF LOT 5, A DISTANCE OF 168.68 FEET TO A POINT OF INTERSECTION WITH A LINE 361.40 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOT 5, THENCE EASTERLY ALONG SAID LINE 361.40 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOT 5, A DISTANCE OF 224.04 FEET TO A POINT OF INTERSECTION WITH A LINE 39.96 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID LOT 5, THENCE SOUTHERLY ALONG SAID LINE 39.96 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID LOT 5, A DISTANCE OF 148.68 FEET TO A POINT OF INTERSECTION WITH A LINE 212.72 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOT 5, THENCE EASTERLY ALONG A LINE 212.72 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOTS 4 AND 5, TO THE CENTER LINE OF SAID SANDERS ROAD AND THENCE SOUTHERLY ALONG SAID CENTER LINE OF SANDERS ROAD, A DISTANCE OF 20.16 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS

# UNOFFICIAL COPY

PARCEL 3

THAT PART OF LOTS 4 AND 5 IN COUNTY CLERK'S DIVISION OF SECTION 18, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE CENTER LINE OF SANDERS ROAD WHICH IS THE POINT OF INTERSECTION OF SAID CENTER LINE OF SANDERS ROAD AND A LINE 192.72 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOTS 4 AND 5; THENCE WESTERLY ON SAID LINE 192.72 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOTS 4 AND 5, TO THE WEST LINE OF SAID LOT 5; THENCE NORTHERLY ALONG SAID WEST LINE OF LOT 5, A DISTANCE OF 168.68 FEET TO A POINT OF INTERSECTION WITH A LINE 361.40 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOT 5, THENCE EASTERLY ALONG SAID LINE 361.40 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOT 5, A DISTANCE OF 224.04 FEET TO A POINT OF BEGINNING SAID POINT BEING ON A LINE 39.96 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID LOT 5; THENCE SOUTHERLY ALONG SAID LINE 39.96 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID LOT 5, A DISTANCE OF 148.68 FEET TO A POINT OF INTERSECTION WITH A LINE 212.72 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOT 5; THENCE EASTERLY ALONG A LINE 212.72 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOTS 4 AND 5, TO THE CENTER LINE OF SAID SANDERS ROAD AND THENCE NORTHERLY ALONG SAID CENTER LINE OF SANDERS ROAD, A DISTANCE OF 149.94 FEET MORE OR LESS TO A POINT OF INTERSECTION WITH A LINE 361.40 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF LOTS 4 AND 5 AFORESAID; THENCE WESTERLY ALONG SAID LINE 361.40 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOTS 4 AND 5, 267.59 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS

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