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Prepared by and after
recording return to:

Alzheimer & Gray,
10 South Wacker Drive
Suite 4000
Chicago, Illinois 60606
Attention: Marjorie J. Zessar



Eugene "Gene" Moore Fee: \$36.50
Cook County Recorder of Deeds
Date: 08/11/2003 02:44 PM Pg: 1 of 7

This space reserved for Recorder's use only

NNN 101031334
20 2 70
**FIRST AMENDMENT
TO
OPERATING AGREEMENT**

THIS FIRST AMENDMENT TO OPERATING AGREEMENT ("First Amendment") is made as of the 07th day of June 2003 by and between WOODLAND CREEK ASSOCIATES, an Illinois limited partnership ("WCA") and WOODLAND CREEK ASSOCIATES II, an Illinois limited partnership ("WCA II").

RECITALS

- A. WCA (ultimate successor to Drovers Bank of Chicago, not personally, but as Trustee under Trust Agreement dated March 1, 1980 and known as Trust No. 80043) and WCA II (ultimate successor to American National Bank and Trust Company of Chicago, not personally, but as Trustee under Trust Agreement dated March 1, 1985 and known as Trust No. 63307) are parties to that certain Operating Agreement dated as of December 1, 1985 (the "**Original Agreement**") and filed with the Registrar of Torrens Titles in Cook County, Illinois on December 30, 1985 as Document LR3486820, which encumbers land legally described on Exhibit "A" attached hereto and made a part hereof.
- B. WCA and WCA II desire to amend the Original Agreement as hereinafter set forth.

NOW, THEREFORE, in consideration of the Original Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Defined Terms.** Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Original Agreement.
2. **Operating Expenses.** The definition of "Operating Expenses" as set forth in Subsection 3(a)(vi) of the Original Agreement is hereby amended by adding the following language at the end of such subsection:

"or any costs and expenses for the maintenance, repair and replacement of the Streets and Utility Services (as such terms are defined in that certain Declaration of Mutual and Reciprocal Easements, Covenants and Restrictions dated as of December 1, 1985 and filed with the Registrar of Torrens Titles in Cook County, Illinois on December 30, 1985 as Document LR3486819 ("**Declaration**")) at Phase I or Phase II to the

(2)

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extent such costs and expenses are the sole obligation of WCA or WCA II, respectively, pursuant to the terms and conditions of the Declaration."

3. **Default.** Section 4 of the Original Agreement is hereby amended by adding the following paragraph at the end of subsection (a) thereof:

"Notwithstanding anything to the contrary set forth herein, in the event that either party fails to pay its proportionate share of Operating Expenses, the non-defaulting party shall not be entitled to pursue any injunctive relief that would prohibit the defaulting party from utilizing the Phase I Amenities or the Phase II Amenities, as the case may be, pursuant to the Declaration. Any claim by the non-defaulting party for reimbursement of the defaulting party's proportionate share of Operating Expenses, as well as all costs and expenses, including reasonable attorneys' fees, awarded to the non-defaulting party in enforcing any payment or other obligation of the defaulting party in any suit or proceeding under this Section 4 shall be assessed against the defaulting party and constitute a lien (the "*Expense Lien*") against the parcel owned by the defaulting party until paid, effective upon the recording of a notice of lien priority with respect thereto in the real estate records in Cook County, Illinois; provided, however, that any such Expense Lien shall be subject and subordinate to (i) liens for taxes and other charges which by applicable law are expressly made superior; (ii) all liens recorded in the real estate records of Cook County, Illinois prior to the date of recordation of said notice of lien priority; and (iii) any existing or future lien of a third party mortgage encumbering the parcel owned by the defaulting party, from time to time. The Expense Lien may be foreclosed in accordance with the then prevailing Illinois law relating to the foreclosure of realty mortgages (including the right to recover any deficiency.)"

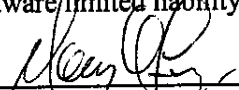
4. **Headings.** Section and other headings contained in this First Amendment are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of this First Amendment or any provision hereof.
5. **Applicable Law and Jurisdiction.** This First Amendment shall be construed under and shall be governed by the laws of the State of Illinois.
6. **Counterpart Execution.** This First Amendment may be executed in any number of counterparts each of which shall be considered an original and all of which, when taken together, constitute one agreement.
7. **Entire Agreement.** This First Amendment constitutes the entire agreement between the parties with respect to the matters addressed in this First Amendment and supersedes all prior understandings or agreements between the parties related to these subject matters. Except as amended by this First Amendment, the Original Agreement remains in full force and effect. In the event of any conflict or inconsistency between the terms and provisions of this First Amendment and the terms and provisions of the Original Agreement, the terms and provisions of this First Amendment shall control to the extent necessary to resolve such conflict or inconsistency.

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IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed as of the day and year first written above.

WOODLAND CREEK ASSOCIATES,
an Illinois limited partnership


By: Algonquin Investments, LLC,
a Delaware limited liability company

By: 

Marvy A. Finger
Manager

WOODLAND CREEK ASSOCIATES II,
an Illinois limited partnership

By: Algonquin Investments, LLC,
a Delaware limited liability company

By: 

Marvy A. Finger
Manager

PROPERTY OF COOK COUNTY CLERK'S OFFICE

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APPROVED AND CONSENTED TO BY:

Parcel A Mortgagee

FEDERAL HOME LOAN MORTGAGE CORPORATION

By: *David J. Fetter*
 Name: David J. Fetter
 Its: Regional Director

Parcel B Mortgagees

BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE VILLAGE OF WHEELING, ILLINOIS

By: *Joyce Wallington Jones*
 Name: Joyce Wallington Jones
 Its: Authorized Officer

FEDERAL HOME LOAN MORTGAGE CORPORATION

By: *David J. Fetter*
 Name: David J. Fetter
 Its: Regional Director

Deputy Clerk of Cook County Clerk's Office

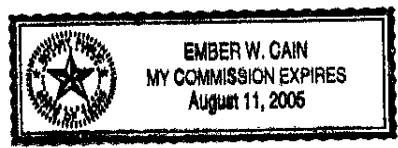
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STATE OF TEXAS)
) SS:
COUNTY OF HARRIS)

I, Ember W. Cain, a Notary Public in and for said County in the State aforesaid, do hereby certify that **Marvy A. Finger**, Manager of Algonquin Investments, LLC, a Delaware limited liability company in its capacity as general partner of WOODLAND CREEK ASSOCIATES, an Illinois limited liability company and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered such instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes set forth therein.

GIVEN under my hand and Notarial Seal, this 6TH day of June, 2003.

Ember W. Cain
Notary Public



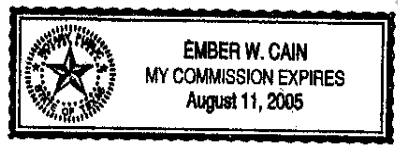
My Commission Expires:
8-11-05

STATE OF TEXAS)
) SS:
COUNTY OF HARRIS)

I, Ember W. Cain, a Notary Public in and for said County in the State aforesaid, do hereby certify that **Marvy A. Finger**, Manager of Algonquin Investments, LLC, a Delaware limited liability company in its capacity as general partner of WOODLAND CREEK ASSOCIATES II, an Illinois limited liability company and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered such instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes set forth therein.

GIVEN under my hand and Notarial Seal, this 6TH day of June, 2003.

Ember W. Cain
Notary Public



My Commission Expires:
8-11-05

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STATE OF Illinois)
) SS:
COUNTY OF Cook)

I, Oscar P. Mendoza, Jr., a Notary Public in and for said County in the State aforesaid, do hereby certify that David J. Fetter, Reg. Director of FEDERAL HOME LOAN MORTGAGE CORPORATION and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Regional Director, appeared before me this day in person and acknowledged that he signed and delivered such instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes set forth therein.

GIVEN under my hand and Notarial Seal, this 11th day of June, 2003.

Oscar P. Mendoza Jr.
Notary Public



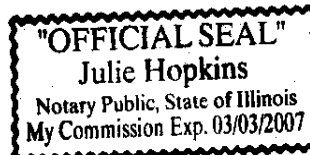
My Commission Expires:
5-10-06

STATE OF IL)
) SS:
COUNTY OF COOK)

I, JULIE HOPKINS, a Notary Public in and for said County in the State aforesaid, do hereby certify that Joyce Wallington-Jones, Authorized Officer of BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE VILLAGE OF WHEELING, ILLINOIS and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Authorized Officer, appeared before me this day in person and acknowledged that he signed and delivered such instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes set forth therein.

GIVEN under my hand and Notarial Seal, this 11th day of June, 2003.

Julie Hopkins
Notary Public



My Commission Expires:
5/3/07

UNOFFICIAL COPY**EXHIBIT "A"****LEGAL DESCRIPTIONS****PARCEL A**

That part of the West 1/2 of the Northwest 1/4 of Section 23, Township 42 North, Range 11, East of the Third Principal Meridian, lying South of the South line of the North 20 acres thereof, lying North of the North line of the South 20 acres thereof, and lying East of a line 50 feet East of and parallel with the West line of said Northwest 1/4 of Section 23 aforesaid, in Cook County, Illinois.

P.I.N.: 03-23-100-003

PARCEL B

Lot 1 in Woodland Creek II filed August 3, 1987 as document LR3640185 being a resubdivision of Lots 3, 4, 5 and 6 in Palatine Expressway Industrial Park, being a subdivision of part of the North 20 acres of the West 1/2 of the North West 1/4 of Section 23, Township 42 North, Range 11 East of the Third Principal Meridian, according to the plat thereof registered in the Office of the Registrar of Titles of Cook County, Illinois on July 17, 1970 as document LR2512301 and Lot 2-B in the resubdivision of Lot 2 in Palatine Expressway Industrial Park, being a subdivision of part of the North 20 acres of the West 1/2 of the North West 1/4 of Section 23, Township 42 North, Range 11 East of the Third Principal Meridian, according to the plat of said resubdivision registered in the office of the Registrar of Titles of Cook County, Illinois on February 18, 1971 at document LR2543237, all in Cook County, Illinois.

P.I.N.: 03-23-100-013

*Property Community Known As: 333 Wood Creek Rd
Wheeling, Ill*