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This Instrument Prepared By And
When Recorded Return To:

Andrew D. Booker
Locke Liddell & Sapp LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776

Doc#: 0327327160
Eugene "Gene" Moore Fee: \$50.00
Cook County Recorder of Deeds
Date: 09/30/2003 03:10 PM Pg: 1 of 14

Near North National Title Corp
222 North LaSalle Street
Chicago, Illinois 60601

MODIFICATION, INCREASE AND EXTENSION OF PROMISSORY NOTE, MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FINANCING STATEMENT AND OTHER LOAN INSTRUMENTS

See 8/7/10/03

THIS MODIFICATION, INCREASE AND EXTENSION OF PROMISSORY NOTE, MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FINANCING STATEMENT AND OTHER LOAN INSTRUMENTS (this "Agreement") is made and entered into to be effective as of September 12, 2003, by and between HSA-PCP O'HARE EAST I, LTD., a Texas limited partnership ("Borrower"), and GUARANTY BANK (formerly known as Guaranty Federal Bank, F.S.B.), a federal savings bank ("Lender").

RECITALS:

A. Lender made a loan (the "Loan") to Borrower in the original stated amount of TWELVE MILLION FOUR HUNDRED SIXTY-SEVEN THOUSAND SIX HUNDRED TWENTY-TWO DOLLARS (\$12,467,622.00), governed by the terms and conditions of that certain Construction Loan Agreement, dated October 10, 2000, by and between Lender and Borrower (the "Loan Agreement"), evidenced by a Promissory Note (the "Note"), dated October 10, 2000, in the stated principal amount of \$12,467,622.00, executed by Borrower and payable to the order of Lender, secured by, among other things, a Mortgage, Security Agreement, Assignment of Leases and Rents and Financing Statement dated of even date with the Note, recorded under Document No. 00868363 in the Office of the Recorder of Cook County, Illinois (the "Mortgage"), which covers certain real property, as described on Exhibit A, attached hereto and incorporated herein by reference (the "Property"), and an Assignment of Leases and

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Rents, dated of even date with the Note, recorded under Document No. 00868364 in the Office of the Recorder of Cook County, Illinois (the "Assignment of Leases").

B. Lender and Borrower mutually executed an Extension Agreement (the "First Extension Agreement") effective as of October 26, 2002, recorded under Document No. 0021270962 in the Office of the Recorder of Cook County, Illinois.

C. Lender and Borrower mutually executed an Extension Agreement (the "Second Extension Agreement") effective as of April 26, 2003.

D. The outstanding principal balance owing on the Note and Loan as of the date hereof is \$11,240,874.00, and there are funds remaining to be advanced under the Loan in the amount of \$1,133,238.00, allocated for tenant improvements on the Property.

E. Borrower has requested and Lender has agreed to increase the Loan by an additional \$450,000.00.

F. Lender, the owner and holder of the Note and Mortgage and all rights and titles evidenced thereby, and Borrower, the record owner of the Property, desire to further modify, increase and extend the Note, the Mortgage, the Loan Agreement and the other documents evidencing, governing, securing or guaranteeing the Loan (collectively, the "Loan Instruments"), as herein provided.

AGREEMENT.

NOW, THEREFORE, in consideration of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Promissory Note**. The Note is hereby modified, increased and extended as follows:

(a) The face amount of the Note is hereby increased from "\$12,467,622.00" to "\$12,824,122.00."

(b) The first paragraph of the Note is hereby modified by deleting the amount "TWELVE MILLION FOUR HUNDRED SIXTY-SEVEN THOUSAND SIX HUNDRED TWENTY-TWO DOLLARS (\$12,467,622.00)," and substituting in lieu thereof the amount "TWELVE MILLION EIGHT HUNDRED TWENTY-FOUR THOUSAND ONE HUNDRED TWELVE DOLLARS (\$12,824,112.00)."

(c) The "Maturity Date", as defined in the Note, is hereby extended to "July 26, 2004".

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(d) Notwithstanding any provision in the Note to the contrary, commencing October 1, 2003, and continuing on the first day of each month thereafter, during the extended term of the Note, Borrower shall pay a principal installment on the Note in the amount of \$10,121.00, in addition to accrued interest due on each such date.

2. **Mortgage.** The Mortgage is hereby modified by deleting the principal amount "Twelve Million Four Hundred Sixty-Seven Thousand Six Hundred Twenty-Two and No/100 Dollars (\$12,467,622.00)" in the third, fourth and fifth lines on page three of the Mortgage, and substituting in lieu thereof the principal amount "Twelve Million Eight Hundred Twenty-Four Thousand One Hundred Twelve Dollars (\$12,824,112.00)."

3. **Loan Agreement.** Section 1.1(bb) of the Loan Agreement is hereby modified by deleting the amount "\$12,467,622.00" and substituting in lieu thereof the amount "\$12,824,112.00." The additional Loan funds of \$450,000.00, shall be advanced by Lender to Borrower primarily for the construction of a traffic signal at the Property and tenant finish costs, subject, however, to the terms and conditions of the Loan Agreement.

4. **Assignment of Leases.** The Assignment of Leases is hereby modified by deleting the reference to the Note in the amount of "\$12,467,622.00," and substituting in lieu thereof the amount of "\$12,824,112."

5. **Effect of Modification.** All Loan Instruments are modified, increased and extended in a manner consistent with the modifications contained herein. All references to the Note in any of the Loan Instruments shall be deemed to be references to the Note, as modified, increased and extended hereby, and all references in the Note to the Mortgage or any other Loan Instruments shall be deemed to be references to the Mortgage and any other Loan Instruments, as modified, increased and extended hereby.

6. **Renewal of Liens.** Borrower hereby agrees that the lien of the Mortgage is hereby renewed until the "secured indebtedness" (as defined in the Mortgage, as modified and increased hereby) has been fully paid, and Borrower hereby acknowledges that the lien of the Mortgage, as so renewed, is a good, valid and subsisting first lien.

7. **Promise to Pay and Perform.** Borrower hereby expressly promises to pay to the order of Lender the unpaid principal balance of the Note, as modified and increased hereby, and all accrued and unpaid interest and all other sums now or hereafter to become due and payable under the Note, as modified and increased hereby, and the Mortgage, as modified and increased hereby, and Borrower hereby expressly promises to perform all of its obligations under the Mortgage, as modified and increased hereby, and under all other Loan Instruments, as hereby modified and increased.

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8. **Borrower's Representations and Warranties.** Borrower represents and warrants to Lender that (a) Borrower is the sole legal and beneficial owner of the Property; (b) Borrower has the full power and authority to make the agreements contained in this Agreement without the joinder or consent of any other party; (c) the execution, delivery and performance of this Agreement will not contravene or constitute an event which itself or which with the passage of time or giving of notice or both would constitute a default under any deed of trust/mortgage, loan agreement, indenture or other agreement to which Borrower is a party or by which Borrower or any of its property is bound; (d) there exists no default under the Note, as modified, increased and extended hereby, or the Mortgage, as modified, increased and extended hereby, or any other Loan instruments, as modified, increased and extended hereby; and (e) the outstanding principal balance of the Loan as of the date hereof is \$11,240,874.00. BORROWER AGREES TO INDEMNIFY AND HOLD HARMLESS LENDER AGAINST ANY LOSS, CLAIM, DAMAGE, LIABILITY OR EXPENSE (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES) INCURRED AS A RESULT OF ANY REPRESENTATION OR WARRANTY MADE BY BORROWER HEREIN PROVING TO BE UNTRUE IN ANY MATERIAL RESPECT.

9. **Policy of Title Insurance.** Contemporaneously with the execution and delivery hereof, Borrower shall cause First American Title Insurance Company, the title insurance company which issued to Lender its ALTA Loan Policy of Title Insurance (the "Existing Policy"), to issue an endorsement (the "Endorsement") to the Existing Policy, in form and substance acceptable to Lender, reflecting the recordation of this Agreement, bringing the effective date of the Existing Policy to the date of the recording of this Agreement, increasing the Existing Policy amount to \$12,824,112.00, and being subject only to the same exceptions to title that are specified in the Existing Policy and any additional condition or exception to title that is acceptable to Lender.

10. **Usury.** All agreements between Borrower and Lender, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of acceleration of the maturity of the Note, as modified, increased and extended hereby or otherwise, shall the interest contracted for, charged or received by Lender exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Lender in excess of the maximum lawful amount, the interest payable to Lender shall be reduced ipso facto to the maximum amount permitted under applicable law; and if from any circumstance Lender shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the principal of the Note, as modified, increased and extended hereby, and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of the Note, as modified, increased and extended hereby, such excess shall be refunded to Borrower. All interest paid or agreed to be paid to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period until payment in full of the principal (including the period of any renewal or extension thereof) so that the interest thereon for such full period shall not exceed the maximum amount permitted by

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applicable law. This paragraph shall control all agreements between Borrower and Lender.

11. **No Waiver.** Lender's execution and delivery of this Agreement shall not be construed to waive any defaults, events of default, or remedies hereafter under the Loan Instruments and any such waiver is expressly negated and denied by Lender. Lender hereby expressly reserves all rights and remedies it may have in law or in equity as a result of any default or event of default which may hereafter exist under the Loan Instruments.

12. **Expenses.** Borrower agrees to pay to Lender, contemporaneously with the execution and delivery hereof, all costs and expenses incurred in connection with this transaction, including without limitation, the extension fee in the amount of \$64,121.00, as consideration for the modification, increase and extension of the Loan Instruments, the premium for the Endorsement, reasonable fees and expenses of Lender's counsel and recording fees.

13. **Severability.** If any provision hereof is held to be illegal or unenforceable, such fact shall not affect any other provision hereof, and this Agreement shall be construed as if such provision had never been contained herein.

14. **Miscellaneous.**

a. The terms and conditions hereof may not be modified, amended, altered or otherwise affected except by instrument in writing executed by Lender and Borrower.

b. Except as expressly modified and increased hereby, the terms and conditions of the Note and the other Loan Instruments are and will remain in full force and effect.

c. Borrower agrees to execute and deliver to Lender such further documents and instruments evidencing or pertaining to the Loan as may be reasonably requested by Lender from time to time so as to evidence the terms and conditions hereof.

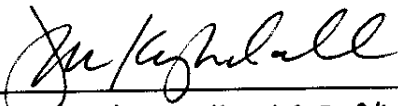
d. This Agreement may be executed in several counterparts, and all so executed will constitute one agreement binding on the parties hereto, notwithstanding that the parties are not signatories to the same counterpart.

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EXECUTED under seal by the parties hereto on the dates set forth in the acknowledgments below, to be effective as of the day and year first above written.

LENDER:

GUARANTY BANK,
a federal savings bank

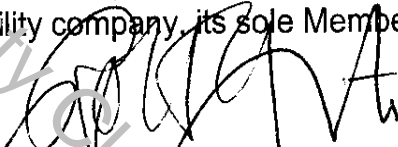
By: 
Name: JOHN KUYKENDALL
Title: VICE PRESIDENT


BORROWER:

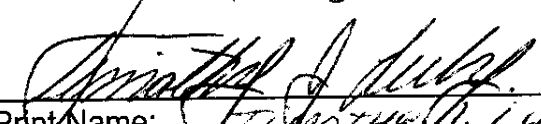
HSA-PCP O'HARE EAST I, LTD., a Texas limited partnership

By: HSA-River, LLC, an Illinois limited liability company, its General Partner

By: New River, LLC, an Illinois limited liability company, its sole Member

By: 
Print Name: ROBERT SMIETANA
Print Title: MANAGER

By: 
Print Name: John E. Shaffer
Print Title: Manager

By: 
Print Name: FREDERICK W. LYBE
Print Title: MANAGER

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THE STATE OF TEXAS

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COUNTY OF Harris

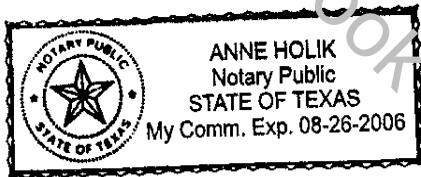
I, Anne Holik, a Notary Public in and for the State aforesaid, DO HEREBY CERTIFY, that John Kuykendall, personally known to me to be the Vice President, on behalf of Guaranty Bank, a federal savings bank, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that he signed and delivered the said Instrument as his free and voluntary act and as the free and voluntary act and deed of said company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 23rd day of September, 2003.

My Commission Expires:

8-26-06

Anne Holik
Notary Public for the State of TEXAS



THE STATE OF IL

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COUNTY OF Cook

I, Grace Fill, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Robert E. Pomietana, personally known to me to be a Managing Member, on behalf of New River, LLC, an Illinois limited liability company, sole Member of HSA-River, LLC, an Illinois limited liability company, General Partner of HSA-PCP O'HARE EAST I, LTD., a Texas limited partnership, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that he signed and delivered the said Instrument as his free and voluntary act and as the free and voluntary act and deed of said company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 16th day of September, 2003.

My Commission Expires:

7/28/05

Grace Fill
Notary Public for the State of IL



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THE STATE OF IL §
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COUNTY OF Cook §

I, Grace Fill, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that John E. Shaffer, personally known to me to a Managing Member, on behalf of New River, LLC, an Illinois limited liability company, sole Member of HSA-River, LLC, an Illinois limited liability company, General Partner of HSA-PCP O'HARE EAST I, LTD., a Texas limited partnership, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that he signed and delivered the said Instrument as his free and voluntary act and as the free and voluntary act and deed of said company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 16th day of September, 2003.

My Commission Expires:
7/28/05

Grace Fill
Notary Public for the State of IL



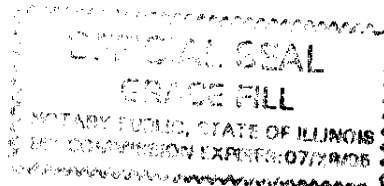
THE STATE OF IL §
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COUNTY OF Cook §

I, Grace Fill, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Timothy J. Luby, personally known to me to be a Managing Member, on behalf of New River, LLC, an Illinois limited liability company, sole Member of HSA-River, LLC, an Illinois limited liability company, General Partner of HSA-PCP O'HARE EAST I, LTD., a Texas limited partnership, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that he signed and delivered the said Instrument as his free and voluntary act and as the free and voluntary act and deed of said company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 16th day of September, 2003.

My Commission Expires:
7/28/05

Grace Fill
Notary Public for the State of IL



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EXHIBIT A LEGAL DESCRIPTION

Parcel 1:

The south 1/2 of the south 1/2 of the northwest fractional 1/4 of fractional section 22, township 40 north, range 12, east of the third principal meridian, lying east of the 66 foot right-of-way of the Chicago, Minneapolis and Sault Sainte Marie Railway Company, except that part bounded and described as follows: Beginning at the point of intersection of the south line of the northwest fractional 1/4 of said fractional section 22 aforesaid, with the northerly extension of the west line of lot 1 in block 4 of Volk Bros.' River Drive Addition to Franklin Park in Robinson's Reserve and fractional section 22 aforesaid; Thence south 90 degrees 00 minutes 00 seconds west, along said south line of the northwest fractional 1/4, a distance of 157.21 feet to the point of intersection with a line drawn 10.00 feet east of and parallel with the west line and its northerly extension of Martens Street (being a line 33.00 feet west of and parallel with the west line of block 4) in said Volk Bros.' River Drive Addition to Franklin Park; Thence north 0 degrees 16 minutes 15 seconds west, 30.00 feet, along said line 10.00 feet east of and parallel to a line 30.00 feet north of and parallel with the aforesaid south line of the northwest fractional 1/4; Thence north 90 degrees 00 minutes 00 seconds east, along said parallel line, 157.29 feet to the northerly extension of the west line of lot 1 in said block 4; Thence south 0 degrees 07 minutes 47 seconds east, along said northerly extension, 30.00 feet to the Place of Beginning, and except that part bounded and described as follows:

Commencing at the southeast corner of said northwest fractional 1/4 of section 22 aforesaid; Thence south 90 degrees 00 minutes 00 seconds west, along the south line thereof, 293.42 feet to the Point of Beginning of the following described parcel of land; Thence continuing south 90 degrees 00 minutes 00 seconds west, along said south line, 179.93 feet to the point of intersection with the northerly extension of the west line of lot 1 in block 4 in Volk Bros.' River Drive Addition to Franklin Park in Robinson's Reserve and fractional section 22 aforesaid; Thence north 0 degrees 07 minutes 47 seconds west, 30.00 feet along said northerly extension to a line drawn 30.00 feet north of and parallel with the south line of said northwest fractional 1/4 of fractional section 22; Thence north 90 degrees 00 minutes 00 seconds east, along said parallel line, 139.83 feet; Thence south 53 degrees 14 minutes 23 seconds east, 50.13 feet to the Place of Beginning, and except that part bounded and described as follows:

Beginning at the southeast corner of said northwest fractional 1/4 of section 22 aforesaid; Thence south 90 degrees 00 minutes 00 seconds west, along the south line thereof, 293.42 feet; Thence north 53 degrees 14 minutes 23 seconds west, 50.13 feet to a line drawn 30.00 feet north of and parallel with the south line of said northwest fractional 1/4 of fractional section 22; Thence north 90 degrees 00 minutes 00 seconds east, along said parallel line, 333.43 feet to the east line of said northwest fractional 1/4; Thence south 0 degrees 16 minutes 53 seconds east, along said east line, 30.00 feet to

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the Point of Beginning and except that part described as follows:

Beginning at the intersection of the north line of the south 1/2 of the south 1/2 of the northwest fractional 1/4 aforesaid with the west line of the south section of Alexander Robinson's Reserve in township 40 north, range 12 east aforesaid; Thence south 0 degrees 16 minutes 53 seconds east, along said west line, 49.61 feet to a point on a line drawn 608.50 feet north of and parallel with the south line of the northwest fractional 1/4 aforesaid; Thence south 90 degrees 00 minutes 00 seconds west, along the aforesaid parallel line, 1096.78 feet to the easterly line of the 66 foot right-of-way aforesaid; Thence north 13 degrees 01 minutes 00 seconds west, along said easterly line, 51.85 feet to said north line; Thence south 89 degrees 57 minutes 12 seconds east, along said north line, 1108.21 feet to the Point of Beginning, in Cook County, Illinois.

Parcel 2:

Easement for the benefit of Parcel 1 as created by Amended and Restated Reciprocal Easement Agreement by and between Old River, LLC, an Illinois limited liability company, and HSA-PCP O'Hare East I, Ltd., a Texas limited partnership, recorded November 3, 2000 as document 00368356:

(A) 40 foot cross access easement, and an access easement for pedestrian, vehicular ingress and egress to and from Ivanhoe Road and River Road as depicted on Exhibit C attached thereto;

(B) storm sewer easements and detention and drainage easement over those portions of the land, depicted on Exhibit C attached thereto, as are necessary to use and maintain the storm sewers, drainage ditches and retention pond; and

(C) water main easements under and through those portions of the land, depicted on Exhibit C attached thereto, for the maintenance of certain water lines to be located underground for the purpose of serving the land with water for drinking and for sprinkling systems.

Area = 606,639 sq. ft. or 13.9265 acres.

PIN: 12-22-100-16^P and a portion of 12-22-100-16^H

Known as: 3702-20 River Road, Franklin Park, Illinois.

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MODIFICATION OF GUARANTY AND CONSENT OF GUARANTORS

FOR VALUABLE CONSIDERATION, JOHN E. SHAFFER, CARL M. MANOFSKY, TIMOTHY J. LUBY, ROBERT E. SMIETANA and MELISSA S. PIELET, as guarantors (the "Guarantors") of the Loan, evidenced by the Note and secured by the Mortgage, described in the Modification, Increase and Extension of Promissory Note, Mortgage, Security Agreement, Assignment of Leases and Rents and Financing Statement and Other Loan Instruments (the "Modification Agreement") to which this Modification and Consent is attached, hereby, jointly and severally, acknowledge and consent to the terms of the Modification Agreement and agree that (a) the principal amount of the Note (the "Guaranteed Note") which, among other things, the Guarantors have guaranteed pursuant to that certain Guaranty (the "Guaranty"), effective as of October 10, 2000, in connection with the Loan, is increased from \$12,467,622 to \$12,824,122, and that the Guaranty is hereby modified to reflect that the Guaranteed Note is increased to \$12,824,122.00; (b) the execution and delivery of the Modification Agreement will in no way change or modify the Guarantors' obligations under the Guaranty, as modified hereby; (c) the Guaranty, as modified hereby, is in full force and effect; and (d) there are no claims, counterclaims, offsets or defenses to the Guaranty, as modified hereby.

Executed as of the 1st day of September, 2003.

By: 

JOHN E. SHAFFER

By: 

CARL M. MANOFSKY

By: 

TIMOTHY J. LUBY

By: 

ROBERT E. SMIETANA

By: 

MELISSA S. PIELET

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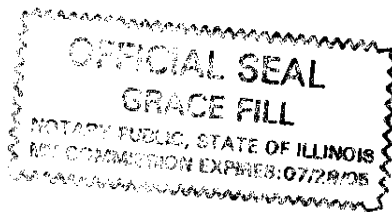
THE STATE OF IL §
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COUNTY OF Cook §

I, Grace Fill, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that JOHN E. SHAFFER, personally known to me, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that he signed and delivered the said Instrument as his free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 16th day of September, 2003.

My Commission Expires: 7/28/05

Grace Fill
Notary Public for the State of IL



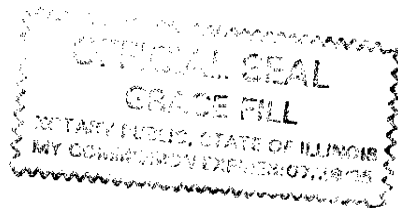
THE STATE OF IL §
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COUNTY OF Cook §

I, Grace Fill, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that CARL M. MANOFSKY, personally known to me, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that he signed and delivered the said Instrument as his free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 16th day of September, 2003.

My Commission Expires: 7/28/05

Grace Fill
Notary Public for the State of IL



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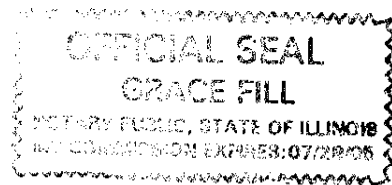
THE STATE OF IL §
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COUNTY OF Cook §

I, Grace Fill, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that TIMOTHY J. LUBY, personally known to me, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that he signed and delivered the said Instrument as his free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 16th day of September, 2003.

My Commission Expires: 7/28/05

Grace Fill
Notary Public for the State of IL



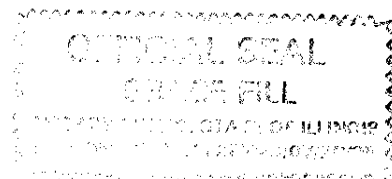
THE STATE OF IL §
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COUNTY OF Cook §

I, Grace Fill, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that ROBERT E. SMETANA, personally known to me, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that he signed and delivered the said Instrument as his free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 16th day of September, 2003.

My Commission Expires: 7/28/05

Grace Fill
Notary Public for the State of IL



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THE STATE OF IL §
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I, Grace Fill, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that MELISSA S. PIELET, personally known to me, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that she signed and delivered the said Instrument as her free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 16th day of September 2003.

My Commission Expires:
7/28/05

Grace Fill
Notary Public for the State of IL

