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This Document Prepared By  
and After Recording Return To:

Lance R. Staker  
Chapman and Cutler  
111 West Monroe Street  
Chicago, Illinois 60603



Doc#: 0329719162  
Eugene "Gene" Moore Fee: \$40.50  
Cook County Recorder of Deeds  
Date: 10/24/2003 12:23 PM Pg: 1 of 9

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RECORDER'S USE ONLY

## FIRST SUPPLEMENT TO MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS

This First Supplement to Mortgage and Security Agreement with Assignment of Rents dated as of September 19, 2003 (the "*Supplement*") is being entered into between Edgar J. Hofmeister (hereinafter referred to as "*Mortgagor*") and Harris Trust and Savings Bank, an Illinois banking corporation with its mailing address at 111 West Monroe Street, Chicago, Illinois 60690 (hereinafter referred to as "*Mortgagee*");

### WITNESSETH THAT:

WHEREAS, Mortgagor did heretofore execute and deliver to Mortgagee that certain Mortgage and Security Agreement with Assignment of Rents dated as of December 18, 2001, and recorded in the Recorder's Office of Cook County, Illinois on December 24, 2001, as Document No. 0011223039 (the "*Mortgage*"), encumbering the property described on Schedule I attached hereto, in order to secure certain indebtedness of Mortgagor now or from time to time owing to Mortgagee; and

WHEREAS, the Mortgage currently secures, among other things, the obligations of John Hofmeister & Son, Inc., an Illinois corporation (the "*Company*") to reimburse Mortgagee for any drawings made under that certain Irrevocable Transferable Letter of Credit dated December 18, 2001, issued by Mortgagee for the account of the Company, and to pay to Mortgagee all other indebtedness, obligations and liabilities of the Company to Mortgagee under that certain Reimbursement Agreement dated as of June 1, 2001 (the "*Reimbursement Agreement*") between the Company and Mortgagee or under any other Related Documents (as defined in the Reimbursement Agreement), together with interest thereon prior to maturity at the rates per

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annum as set forth in the Reimbursement Agreement and at the times herein and therein provided (hereinafter referred to collectively as the "*Reimbursement Obligations*"); and

WHEREAS, the Company has entered into a Business Loan Agreement with Mortgagee dated as of June 5, 2002, as amended by that certain Change In Terms Agreement dated as of May 31, 2003, and that certain Change In Terms Agreement dated as of the date hereof (the "*Amendment*") (the Business Loan Agreement, as amended, and as may be further amended from time to time being referred to herein as the "*Credit Agreement*"), pursuant to which the Company has executed and delivered to Mortgagee a Promissory Note of the Company dated June 5, 2002 payable to the order of Mortgagee in the original principal sum of \$1,750,000 whereby Mortgagor promises to pay said principal sum (or so much thereof as may be outstanding at the maturity thereof) on May 31, 2004, the maturity date thereof, together with interest thereon prior to maturity at the rates and payable at the times provided for in the Credit Agreement (such Promissory Note, and any and all notes issued in extension or renewal thereof or in substitution or replacement therefor, being hereinafter referred to as the "*Note*"); and

WHEREAS, the Company may from time to time enter into one or more interest rate exchange, cap, collar, floor or other agreements with Mortgagee or its affiliates for the purpose of hedging or otherwise protecting the Company against changes in interest rates (the liability of the Company in respect of such agreements with Mortgagee or its affiliates being hereinafter referred to as the "*Hedging Liability*");

WHEREAS, in consideration of the indebtedness evidenced by the Note and as a condition precedent to entering into the Amendment and making certain other financial accommodations to the Company, Mortgagee requires the Mortgagor, and to accommodate that requirement Mortgagor desires by this Supplement, to confirm and assure that all the real estate and other properties, rights, interests and privileges of Mortgagor which are currently subject to the lien of the Mortgage be and constitute collateral security for the Hedging Liability and the indebtedness evidenced by the Note as well as the indebtedness currently secured; and

WHEREAS, the Mortgage is to continue to secure all the indebtedness now secured thereby, this Supplement being executed and delivered to confirm and assure the foregoing;

NOW, THEREFORE, for and in consideration of the execution and delivery by Mortgagee of the Amendment and the extension of any Hedging Liability, and other good and valuable consideration, receipt whereof is hereby acknowledged, the Mortgage shall be and hereby is supplemented and amended as follows, to wit:

To secure (i) the payment of the Reimbursement Obligations as and when the same becomes due and payable (whether by demand, lapse of time, acceleration or otherwise), (ii) the payment of all principal and premium, if any, of and interest on the Note and any and all notes issued in extension or renewal thereof or in substitution or replacement therefor as and when the same becomes due and payable (whether by demand, lapse of time, acceleration or otherwise) and all advances now or hereafter evidenced thereby, (iii) the payment of all sums due or owing with respect to the Hedging Liability, (iv) the payment of all fees and other sums owing under the Reimbursement Agreement and Credit Agreement, and all other indebtedness, obligations and

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liabilities which this Mortgage secures pursuant to any of its terms and (v) the observance and performance of all covenants and agreements contained herein, in the Reimbursement Agreement, Credit Agreement, in the Note and in any other instrument or document at any time evidencing or securing any of the foregoing or setting forth terms and conditions applicable thereto (all of such indebtedness, obligations and liabilities referred to in clauses (i), (ii), (iii), (iv) and (v) above being hereinafter referred to as the "*Secured Indebtedness*"), Mortgagor does hereby grant, bargain, sell, convey, mortgage, warrant, assign, and pledge unto Mortgagee, and its successors and assigns, and grant to Mortgagee, and its successors and assigns, a security interest in, all and singular that certain real estate lying and being in Cook County in the State of Illinois described on Schedule I attached hereto and made a part hereof, together with all of the properties, rights, interests and privileges described in Granting Clauses I through VIII, both inclusive, of the Mortgage, each and all of such Granting Clauses being hereby incorporated by reference herein with the same force and effect as though set forth herein in their entirety. The foregoing grant of a lien is in addition to and supplemental of and not in substitution for the grant of the lien created and provided for by the Mortgage, and nothing herein contained shall affect or impair the lien or priority of the Mortgage as to the indebtedness which would be secured thereby prior to giving effect to this Supplement.

In order to induce Mortgagee to enter into the Amendment, extend any Hedging Liability, and to accept this Supplement, Mortgagor hereby further covenants and agrees with, and represents and warrants to, Mortgagee as follows:

1. The Mortgage shall be and hereby is further amended as follows:

(a) The last paragraph on page 3 of the Mortgage (which ends on page 4 of the Mortgage) shall be amended by adding the words "plus (iv) the total face amount of the Note, plus (v) the total interest that may hereafter accrue on the Note" immediately before "." appearing at the end thereof.

(b) Section 18 of the Mortgage is amended by deleting "." appearing at the end of subsection (g) thereof and substituting therefor "; or" and by adding the following new subsections (h) immediately thereafter:

"(h) the occurrence of an Event of Default (as defined in the Credit Agreement) under the Credit Agreement."

(c) Section 19 of the Mortgage shall be amended by adding the words "or the Credit Agreement" immediately after the words "(as defined in the Reimbursement Agreement)" appearing therein.

(d) Section 30 of the Mortgage is amended by (i) adding the words "amounts owing under the Credit Agreement and the Note and" immediately after the words "to secure" appearing in the first line thereof, and (ii) deleting the amount "\$12,000,000" appearing therein and substituting therefor the amount "\$15,700,000."

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(e) Section 38 of the Mortgage is amended in its entirety to read as follows:

“38. *Terms of Agreements Not Superseded.* Nothing contained herein shall be deemed or construed to permit any act or omission which is prohibited by the terms of the Credit Agreement, the Note, the Reimbursement Agreement or any other Related Document (as defined in the Reimbursement Agreement) and the covenants and agreements contained herein are in addition to and not in substitution for the covenants and agreements contained in the Credit Agreement, the Reimbursement Agreement and the Related Documents.”

2. Mortgagor hereby represents and warrants to Mortgagee that as of the date hereof each of the representations and warranties set forth in the Mortgage as supplemented hereby are true and correct and that no Event of Default (as such term is defined in the Mortgage), or any other event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, has occurred and is continuing or shall result after giving effect to this Supplement. Mortgagor hereby repeats and reaffirms all covenants and agreements contained in the Mortgage, each and all of which shall be applicable to all of the indebtedness secured by the Mortgage as supplemented hereby. The Mortgagor repeats and reaffirms its covenant that all the indebtedness secured by the Mortgage as supplemented hereby will be promptly paid as and when the same becomes due and payable.

3. All capitalized terms used herein without definition shall have the same meanings herein as they have in the Mortgage. The definitions provided herein of any capitalized terms shall apply to such capitalized terms as the same appear in the Mortgage as supplemented hereby, all to the end that any capitalized terms defined herein and used in the Mortgage as supplemented hereby shall have the same meanings in the Mortgage as supplemented hereby as are given to such capitalized terms herein. Without limiting the foregoing, all references in the Mortgage to the term “*Secured Indebtedness*” shall be deemed references to all the indebtedness, obligations and liabilities secured by the Mortgage as supplemented hereby.

4. All of the provisions, stipulations, powers and covenants contained in the Mortgage shall stand and remain unchanged and in full force and effect except to the extent specifically modified hereby and shall be applicable to all of the indebtedness, obligations and liabilities secured by the Mortgage as supplemented hereby.

5. Mortgagor acknowledges and agrees that the Mortgage as supplemented hereby is and shall remain in full force and effect, and that the Mortgaged Premises are and shall remain subject to the lien and security interest granted and provided for by the Mortgage for the benefit and security of all the Secured Indebtedness, including without limitation the Hedging Liability and the loan made by Mortgagee to the Company under the Credit Agreement which is evidenced by the Note. Without limiting the foregoing, Mortgagor hereby agrees that, notwithstanding the execution and delivery hereof, (i) all rights and remedies of Mortgagee under the Mortgage, (ii) all obligations of Mortgagor thereunder and (iii) the lien and security interest granted and provided for thereby are and as amended hereby shall remain in full force and effect for the

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benefit and security of all the Secured Indebtedness, it being specifically understood and agreed that this Supplement shall constitute and be, among other things, an acknowledgement and continuation of the rights, remedies, lien and security interest in favor of Mortgagee, and of the obligations of Mortgagor and the Company to Mortgagee, which exist under the Mortgage as supplemented hereby.

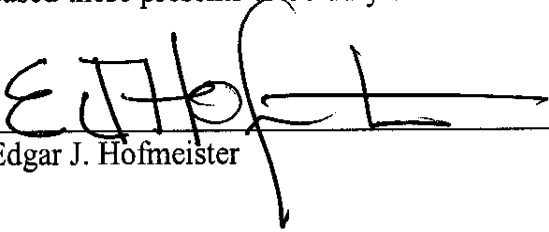
6. This Supplement may be executed in any number of counterparts and by different parties hereto on separate counterpart signature pages, each of which when so executed shall be an original but all of which to constitute one and the same instrument.

7. No reference to this Supplement need be made in any note, instrument or other document making reference to the Mortgage, any reference to the Mortgage in any of such to be deemed to be a reference to the Mortgage as supplemented hereby. This instrument shall be construed and governed by and in accordance with the laws of the State of Illinois.

8. Wherever herein any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements by or on behalf of Mortgagor, or by or on behalf of Mortgagee, or by or on behalf of the holder or holders of the Secured Indebtedness contained in the Mortgage as supplemented hereby shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

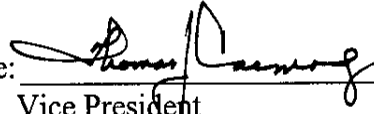
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IN WITNESS WHEREOF, Mortgagor has caused these presents to be duly executed the day and year first above written.

  
Edgar J. Hofmeister

Accepted and agreed to in Chicago, Illinois as of the day and year first above written.

HARRIS TRUST AND SAVINGS BANK

By   
Name: \_\_\_\_\_  
Title: Vice President

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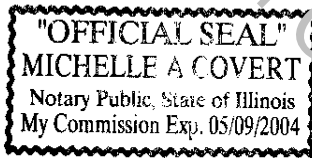
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STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF Cook            )

I, MICHELLE A. COVERT a Notary Public in and for said County, in the State aforesaid, do hereby certify that Edgar J. Hofmeister, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 19<sup>th</sup> day of September, 2003.

Michelle A. Covert  
Notary Public



MICHELLE A. COVERT  
(TYPE OR PRINT NAME)

(Seal)

My Commission Expires:

5/9/03

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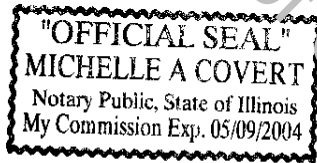
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Michelle A. Covert, Notary Public in and for said County, in the State aforesaid, do hereby certify that THOMAS J. CHARMODY, a Vice President of Harris Trust and Savings Bank, an Illinois banking corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, as of this 19<sup>th</sup> day of September, 2003.

Michelle A. Covert  
Notary Public



MICHELLE A. COVERT  
(Type or Print Name)

(Notarial Seal)

Commission Expires:

5/9/04

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## SCHEDULE I

### LEGAL DESCRIPTION

LOT 31 IN WALKER'S SUBDIVISION OF BLOCK 5 IN S.J. WALKER'S DOCK ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE EAST 1/2, NORTH OF THE RIVER, IN SECTION 30, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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Property Address: 2329 S. Damen  
Chicago, Illinois

P.I.N. No.: 17-30-206-024