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Doc#: 0403548142  
Eugene "Gene" Moore Fee: \$58.00  
Cook County Recorder of Deeds  
Date: 02/04/2004 12:42 PM Pg: 1 of 18

03LT1839  
Return Documents to:  
Stephanie Wolsfelt  
Law Title-National Division  
2000 W. Galena Blvd. # 105  
Aurora, IL 60506

SPACE ABOVE THIS LINE FOR  
RECORDER'S USE.

**MODIFICATION OF MORTGAGE,  
ASSUMPTION, CONSENT AND AGREEMENT**

**THIS MODIFICATION OF MORTGAGE, ASSUMPTION, CONSENT AND AGREEMENT ("Agreement")** is entered into as of the 30<sup>th</sup> day of January, 2004, by and among **ELK GROVE TOWN CENTER, LLC**, an Illinois limited liability company, whose address is c/o Hamilton Partners, Inc., 300 Park Boulevard, Itasca, Illinois 60143 (the "**Transferor**"); **NEW PLAN OF ELK GROVE, LLC**, a Delaware limited liability company, whose address is c/o New Plan Excel Realty Trust, Inc., 1120 Avenue of the Americas, 12th Floor, New York, New York 10036 ("**Transferee**"); and **METROPOLITAN LIFE INSURANCE COMPANY**, a New York corporation, whose address is One Madison Avenue, New York, New York 10010 (Metropolitan Life Insurance Company and its successors and assigns are hereinafter referred to as "**Lender**").

**RECITALS**

A. Lender and Transferor have previously entered into a certain financing transaction wherein Lender agreed to loan up to \$14,500,000 ("**Loan**") to Transferor, as evidenced by that certain Promissory Note dated November 14, 2003 (which note, together with all notes issued in substitution or exchange therefor and/or as any of the foregoing may be amended, modified or supplemented from time to time, is hereinafter referred to as the "**Note**"), executed by Transferor in favor of Lender. The Loan was made and secured pursuant to that certain Mortgage, Security Agreement and Fixture Filing dated as of November 14, 2003 (which mortgage, together with all mortgages issued in substitution or exchange therefor and/or as any of the foregoing may be amended, modified or supplemented from time to time, is hereinafter referred to as the "**Mortgage**"), between Transferor and Lender and filed for record December 2, 2003, in the Office of the Recorder, Cook County, Illinois and recorded as Document Number 0333604054, which encumbers, among other things, the property commonly known as Elk Grove Town Center, Elk Grove Village, Illinois and legally described on Exhibit A attached hereto. The Note, the Mortgage and all other documents evidencing or securing the indebtedness evidenced

This instrument was prepared by ~~and~~  
~~after recording returns to:~~

Gregory Pierce, Esq.  
Katten Muchin Zavis Rosenman  
525 West Monroe Street  
Suite 1600  
Chicago, Illinois 60661-3693

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by the Note or executed in connection therewith as more particularly set forth on **Exhibit B** attached hereto, and any modification, renewal, extension thereof, are hereinafter collectively referred to as the “**Original Loan Documents**.” The Original Indemnity Agreement, the Original Guaranty Agreement and the Original Manager’s Subordination Agreement (each as defined in Recital B herein below) are not, for purposes of this Agreement, and are not within the definition of, Original Loan Documents.

B. As a requirement to Lender making the Loan, Allan J. Hamilton, James L. Sheridan and Todd Berlinghof (together the “**Original Liabe Parties**”) and Borrower executed an Unsecured Indemnity Agreement dated November 14, 2003, in favor of Lender (the “**Original Indemnity Agreement**”), and the Original Liabe Parties entered into a Guaranty Agreement dated November 14, 2003, in favor of Lender (the “**Original Guaranty Agreement**”). As a further requirement to Lender making the Loan, Hamilton Partners Retail Management, Inc. (the “**Original Manager**”) and Borrower executed a Subordination of Management Agreement dated November 14, 2003 in favor of Lender (the “**Original Manager’s Subordination Agreement**”).

C. Transferor desires to sell, transfer, and convey (“**Transfer**”) the “**Property**” (as defined in the Mortgage) to Transferee. Upon and subject to the terms and conditions contained herein and in the other Loan Documents, including without limitation, the delivery to Lender of this Agreement, the New Guaranty, the New Indemnity, the New Manager’s Subordination Agreement and the New IRP Escrow (each as hereinafter defined in Section 8 hereof; the New Guaranty, the New Indemnity and the New Manager’s Subordination Agreement collectively are the “**New Loan Documents**”; the New Loan Documents, together with the Original Loan Documents are the “**Loan Documents**”), Lender is willing to consent to the Transfer. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Mortgage.

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, Lender, Transferor, and Transferee agree as follows:

1. The preambles to this Agreement are incorporated herein and made a part hereof by this reference thereto.

2. Except as set forth herein, the parties hereby acknowledge and agree that this Agreement shall not in any manner waive any rights or remedies afforded Lender under the Original Loan Documents.

3. Transferor and Transferee hereby covenant to Lender as follows:

(a) Prior to the date hereof, (i) Transferor and New Plan (as hereinafter defined) entered into that certain Purchase and Sale Agreement dated as of January 21, 2004, as assigned to Transferee on January 23, 2004, for the Transfer and all conditions precedent to the Transfer, other than obtaining Lender’s consent thereto, have been satisfied or waived.

(b) The Transfer is scheduled to occur on January 30, 2004.

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(c) Within one business day following the Transfer, Transferor and Transferee shall notify Lender in writing that the Transfer has occurred.

4. Transferor represents and warrants to Lender that:

(a) Transferor has the right and power and is duly authorized to enter into and execute and deliver this Agreement and to conclude and consummate all of the transactions described herein and/or contemplated hereby and that all approvals and consents which are required or necessary in connection with the Transfer have been obtained and are in full force and effect.

(b) Subject to Lender's execution and delivery of this Agreement, the Transfer shall not violate any agreement to which Transferor is a party.

(c) Transferor is neither insolvent nor bankrupt and there has been no (i) assignment made for the benefit of the creditors of Transferor, (ii) appointment of a receiver for Transferor or for Transferor's properties, or (iii) bankruptcy, reorganization, or liquidation proceeding instituted by or against Transferor.

(d) The Original Loan Documents, the Original Indemnity Agreement, the Original Guaranty, and the Original Manager's Subordination Agreement, are in full force and effect between Lender and Transferor, Original Liable Parties and Original Manager, as applicable.

(e) There are no existing defaults under the terms of the Original Loan Documents, the Original Indemnity Agreement, the Original Guaranty Agreement, or the Original Manager's Subordination Agreement and no event has occurred which with the giving of notice or the lapse of time or both would constitute such a default, and (ii) there are no outstanding notices of default under the Original Loan Documents, the Original Indemnity Agreement or the Original Manager's Subordination Agreement which have not been cured.

5. Transferee represents and warrants to Lender that:

(a) Transferee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business in the State of Illinois.

(b) Transferee's sole member is New Plan Property Holding Company, a Maryland real estate investment trust ("**New Plan Holding Company**").

(c) The sole shareholder in New Plan Holding Company is New Plan Excel Realty Trust, Inc., a Maryland corporation ("**New Plan**").

(d) Transferee has the right and power and is duly authorized to enter into, execute, deliver and perform its obligations under this Agreement and the Loan Documents and to conclude and consummate all of the transactions described herein and/or contemplated hereby and that all approvals and consents which are required or

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necessary in connection with the Transfer have been obtained and are in full force and effect.

(e) New Plan Holding Company has the right and power and is duly authorized to enter into, execute, deliver and perform, in its capacity as the sole member in Transferee, its obligations under this Agreement and the Loan Documents and to conclude and consummate all of the transactions described herein and/or contemplated hereby and all approvals and consents which are required or necessary in connection with the Transfer have been obtained and are in full force and effect.

(f) The Transfer shall not violate any agreement to which Transferee, New Plan Holding Company or New Plan is a party.

(g) A true and complete copy of Transferee's operating agreement as heretofore amended ("**Transferee's Operating Agreement**") has been delivered to Lender and constitutes the entire understanding by New Plan Holding Company as the sole member in Transferee relating to Transferee and the business or properties thereof, and there are no other agreements, oral or written, by the member in Transferee relating to Transferee or the business or properties thereof.

(h) Transferee's Operating Agreement was duly and validly executed by and delivered to New Plan Holding Company and is in full force and effect and binding and enforceable against New Plan Holding Company as the sole member in Transferee in accordance with its terms.

(i) No default exists under the Transferee's Operating Agreement and no act has occurred and no condition exists which, with the giving of notice or the passage of time, or both, could constitute a default under the Transferee's Operating Agreement.

(j) Transferee is neither insolvent nor bankrupt and there has been no (i) assignment made for the benefit of the creditors of Transferee, (ii) appointment of a receiver for Transferee or for Transferee's properties, or (iii) bankruptcy, reorganization, or liquidation proceeding instituted by or against Transferee.

6. Transferee hereby assumes, in full, and agrees to perform all of Transferor's obligations under the Loan Documents and agrees that Transferee is liable and obligated to pay the "**Secured Indebtedness**" (as such term is defined in the Mortgage) to and for the benefit of Lender in full to the same extent Transferor was liable therefor in accordance with the terms and conditions of the Loan Documents. Transferee further agrees that until the Secured Indebtedness is paid to Lender in full and all of the obligations contained in the Loan Documents are satisfied, Transferee shall be bound by all the covenants, representations, terms and conditions of the Loan Documents as if Transferee had executed and delivered the same to Lender in the place and stead of Transferor and Lender had accepted the same, and such covenants, representations, terms and conditions of the Loan Documents are incorporated herein by this reference thereto. Following the Transfer, without further act or deed, the Loan Documents shall be in full force and effect between Lender and Transferee.

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7. Transferee hereby notifies Lender that following the Transfer, all notices to be given to "Borrower" under the Loan Documents in accordance with Section 14.02 of the Mortgage shall thereafter be sent to c/o New Plan Excel Realty Trust, Inc., 1120 Avenue of the Americas, 12th Floor, New York, New York 10036, attention: Dean Bernstein, Senior Vice President-Finance, Facsimile (646) 562-2491, with copies to c/o New Plan Excel Realty Trust, Inc., 1120 Avenue of the Americas, 12th Floor, New York, New York 10036, attention: Steven F. Siegel, Esq., General Counsel, Facsimile (212) 869-7460 and Sills Cummis Epstein & Gross P.C., 399 Park Avenue, New York, New York 10022, attention: Lester M. Bliwise, Esq., Facsimile Number (212) 643-6550, until Transferee notifies Lender of a different address in accordance with said Section 14.02.

8. Lender hereby consents to the Transfer to Transferee, which consent is contingent upon the delivery to Lender of this fully executed Agreement and to the satisfaction of the following conditions precedent on or before January 30, 2004:

(a) Delivery to Lender of the Unsecured Indemnity Agreement executed by New Plan and Transferee in a form acceptable to Lender (the "**New Indemnity Agreement**").

(b) Delivery to Lender of the Guaranty executed by New Plan in a form acceptable to Lender (the "**New Guaranty**").

(c) Delivery to Lender, at Transferee's expense, of ALTA Loan Policy No. 26-041-92-269434, in form and content acceptable to Lender, issued by Fidelity National Title Insurance Company of New York (the "**Replacement Policy**"), which Replacement Policy shall replace Lender's Loan Policy No. 1401 008129187, dated December 2, 2003, issued by Chicago Title Insurance Company, and which Replacement Policy shall be dated as of the date this Agreement is recorded and shall reflect the Transfer and this Agreement and insure Lender's lien priority has not been affected or impaired in any way.

(d) Delivery to Lender of the Subordination of Management Agreement executed by New Plan and Transferee in a form acceptable to Lender (the "**New Manager's Subordination Agreement**").

(e) Delivery to Lender of the Interest Rate Protection Escrow Agreement executed by Transferee and Fidelity National Title Insurance Company of New York in a form acceptable to Lender (the "**New IRP Escrow**").

(f) Delivery to Lender of an opinion of counsel, in form and substance acceptable to Lender in its sole discretion, regarding (i) the due organization and valid existence of Transferee and New Plan, (ii) the power and authority of Transferee and New Plan, as applicable, to (A) execute and deliver this Agreement and to (B) consummate the Transfer and the transactions contemplated hereby, including but not limited to, Transferee's assumption of Secured Indebtedness and the obligations under the Loan Documents, and (iii) the Loan Documents being binding upon Transferee and New Plan, as applicable.



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(g) Delivery to Lender of certified copies of the following documents: (i) Certificate of Formation, together with all amendments thereto, dated within 20 days of the date hereof, for Transferee in Delaware and all related qualification documents for Illinois; (ii) Transferee's Operating Agreement, which Transferee's Operating Agreement shall contain the single purpose entity covenants contained in Section 2.10 of the Mortgage; (iii) Articles of Incorporation and By-laws, each as amended to date, for each of New Plan Holding Company and New Plan; and (iv) good standing certificates in Delaware and Illinois for each of New Plan and New Plan Holding Company; and (v) certified copies of appropriate authorizing resolutions from New Plan Holding Company, in its capacity as the sole member in Transferee, authorizing Transferee to consummate the Transfer and enter into this Agreement and the documents contemplated hereby, and a shareholder consent authorizing New Plan to enter into the New Indemnity Agreement, the New Guaranty and the New Manager's Subordination Agreement.

(h) Delivery to Lender of current Uniform Commercial Code Financing Statement searches covering New Plan with the Maryland Secretary of State and the Secretary of State and County where the land encumbered by the Mortgage is located showing no filings affecting New Plan (except as may be otherwise acceptable by Lender) or the Property except those in favor of Lender constituting part of the Loan Documents.

(i) Payment to Lender by Transferee of an assumption fee of \$145,000.00.

(j) Payment to Lender by Transferee or Transferor, of all out of pocket costs and expenses incurred by Lender in connection with this Agreement and the matters referred to herein, including, but not limited to, fees and expenses of Katten Muchin Zavis Rosenman, outside counsel to Lender and all recording charges related to recording this Agreement.

(k) Payment of the fees and expenses incurred pursuant to subsections (c), (h) and (i) of this Section 8 shall be paid by Transferee pursuant to an escrow agreement between the parties hereto and Fidelity National Title Insurance Company in form and substance acceptable to Lender.

9. This Agreement is made in accordance with and is intended to be consistent with the Loan Documents. However, except as otherwise provided in any additional agreements hereafter executed by the parties hereto, if any provision contained in this Agreement is in conflict with, or inconsistent with any provision in the Loan Documents, the provisions contained in this Agreement shall govern and control.

10. A breach by Transferor prior to the date of the Transfer and delivery of all items required under Section 8 of this Agreement of any term, provision, covenant or condition herein set forth or herein required of Transferor, or a breach by Transferee of any term, provision, covenant or condition herein set forth or herein required of Transferee shall constitute an "Event of Default" (as that term is defined in the Mortgage) under the Mortgage.

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11. In order to correct a scrivener's error in Section 10.01(a)(i) of the Mortgage, Transferor, Transferee and Lender hereby acknowledge and agree that said Section 10.01(a)(i) is hereby amended to delete the phrase "except as provided in Section 10.05" from the end thereof. Sections 10.01(b) and (c) of the Mortgage are hereby amended and restated in their entirety, and a new Section 10.01(d) is hereby added to the Mortgage as follows:

"(b) The prohibitions on transfer shall not be applicable to (i) Transfers as a result of the death of a natural person who is the Borrower's Constituent; (ii) the issuance, sale or transfer of shares in New Plan in the public or private markets, or (iii) Transfers in connection with estate planning by a natural person to a spouse, son or daughter or descendant of either, a stepson or stepdaughter or descendant of either or to trusts or similar entities controlled by any of them ("Permitted Transferees"). Transfers pursuant to sections 10.01(b)(i), (ii) and (iii) are referred to as "Permitted Transfers".

(c) Lender shall not withhold its written consent to the transfer by New Plan Holding Company (the sole member in Borrower) of its membership interest in Borrower, provided that Lender has received satisfactory evidence that (i) following such transfer New Plan continues to control (directly or indirectly) the Borrower and hold (directly or indirectly) at least a 51% ownership interest in Borrower; and (ii) Lender receives, at its option, a satisfactory attorney's opinion that any such transfers are exempt from registration under the Securities Act of 1933 and are exempt from registration under or in compliance with any applicable state securities laws."

Notwithstanding anything to the contrary contained herein or in the other Loan Documents, Lender agrees that no bankruptcy, change in control, action or omission by, or any other event affecting any of Transferor, the Original Liable Parties or the Original Manager first occurring subsequent to the date of this Agreement and the delivery of all items set forth in Section 8 of this Agreement shall result in a default hereunder or under any of the other Loan Documents.

12. Upon the recordation of this Agreement pursuant to and in accordance with the terms of the escrow agreement referred to in Section 8(j) hereof, Lender releases Transferor and Original Liable Parties from any liability under the Loan Documents and the Original Guaranty and Original Indemnity Agreement, as applicable, arising from acts, occurrences, or events first occurring from and after the effective date of the closing of the Transfer.

13. To the best of Lender's knowledge, no event has occurred, and no condition exists which with the passage of time, the giving of notice, or both, would constitute a default under the Loan Documents or result in an acceleration of the maturity of the Loan.

14. Lender acknowledges that the Estoppel Certificates required to be delivered to Lender pursuant to Section 2.12(b) of the Mortgage have been delivered and that accordingly Borrower has no further obligations under said Section 2.12(b) of the Mortgage.

15. Lender certifies that as of the date hereof the outstanding principal balance of the Loan is \$14,500,000.

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16. The Property shall remain in all respects subject to the lien, charge and encumbrance of the Mortgage and the other Loan Documents, and nothing herein contained and nothing done pursuant hereto, shall affect the lien, charge or encumbrance of the Mortgage or the Loan Documents, or the priority thereof with respect to other liens, charges, encumbrance or conveyance, 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. Transferee covenants and agrees that (i) Transferee or an affiliate of Transferee shall manage the Property, (ii) as of the date hereof, there is not any written agreement governing the management of the Property, (iii) any and all manager's or broker's liens which may arise in connection with the management of the Property are and shall be subordinate to the lien of the Mortgage, and (iv) any and all written agreements for the management of the Property shall, as a condition precedent to their effectiveness, be subject to the reasonable prior written approval of Lender, and shall be made subordinate to the lien of the Mortgage pursuant to a written Subordination of Management Agreement in form and substance acceptable to Lender.

18. This Agreement may not be altered or amended except by an agreement in writing signed by all of the parties hereto. After the consummation of the Transfer, any amendment or modification to the Loan Document shall not require the consent or agreement of Transferor or the Original Liable Parties, and any such amendment or modification can only be made by an agreement in writing by Lender, Transferee and New Plan, as applicable.

19. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

20. If any provisions of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue valid and enforceable to the fullest extent permitted by law.

21. EACH PARTY HERETO WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THE LOAN DOCUMENTS, INCLUDING THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY THE PARTIES HERETO, AND EACH PARTY HERETO ACKNOWLEDGES THAT NEITHER LENDER NOR ANY PERSON ACTING ON BEHALF OF LENDER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH PARTY HERETO FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION.



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22. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

23. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois.


Property of Cook County Clerk's Office

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**IN WITNESS WHEREOF**, this Agreement, pursuant to and in accordance with all applicable laws, has been duly executed by as of the day and year first above written.

**TRANSFEROR:**

**ELK GROVE TOWN CENTER, L.L.C.**, an  
Illinois limited liability company

By:   
Todd Berlinghof, its managing member

**TRANSFeree:**

**NEW PLAN OF ELK GROVE, LLC**, a Delaware  
limited liability company

By: \_\_\_\_\_  
Dean Bernstein, Senior Vice President

**LENDER:**

**METROPOLITAN LIFE INSURANCE  
COMPANY**, a New York corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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**ELK GROVE TOWN CENTER, L.L.C.**, an  
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Todd Berlinghof, its managing member

**TRANSFeree:**

**NEW PLAN OF ELK GROVE, LLC**, a Delaware  
limited liability company

By: \_\_\_\_\_  
Dean Bernstein, Senior Vice President

**LENDER:**

**METROPOLITAN LIFE INSURANCE  
COMPANY**, a New York corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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Illinois limited liability company

By: \_\_\_\_\_  
Todd Berlinghof, its managing member

**TRANSFeree:**

**NEW PLAN OF ELK GROVE, LLC**, a Delaware  
limited liability company

By: \_\_\_\_\_  
Dean Bernstein, Senior Vice President

**LENDER:**

**METROPOLITAN LIFE INSURANCE  
COMPANY**, a New York corporation

By: David P. Davis  
Name: David P. Davis  
Its: Director

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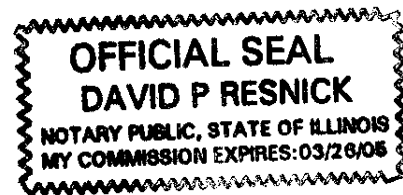
STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF COOK )

I, DAVID P. RESNICK, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that TODD BERLINGHOFF, personally known to me to be the ~~MANAGING MEMBER~~ of Elk Grove Town Center, L.L.C., an Illinois limited liability company, and 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/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 limited liability company, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 27<sup>th</sup> day of JANUARY, 2004.

[Signature]  
 Notary Public

My Commission Expires:





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STATE OF Illinois )  
 ) SS  
 COUNTY OF DePue )

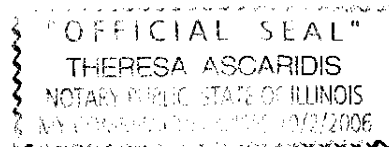
I, Theresa Ascaridis, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that Donald K. Davis personally known to me to be the Director of Metropolitan Life Insurance Company, a New York corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/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 corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 29 day of January, 2004.

Theresa Ascaridis  
 Notary Public

My Commission Expires:

10/2/06



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STATE OF New York )  
 ) SS  
 COUNTY OF New York )

I, Christopher Bishop, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Dean Benstein who is personally known to me to be the SVP of New Plan of Elk Grove, LLC, a Delaware limited liability company, and 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 SVP of said limited liability company, pursuant to authority given by the member of said limited liability company, as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29th day of January, 2004.

Christopher Bishop  
 Notary Public

My Commission Expires:

CHRISTOPHER BISHOP  
 Notary Public, State of New York  
 No. 02B16028311  
 Qualified in New York  
 Commission Expires July 26, 2005

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## Exhibit A

### LEGAL DESCRIPTION

#### PARCEL ONE:

THAT PART OF THE SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF A LINE 765.00 FEET, AS MEASURED ALONG THE NORTH LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  WITH THE SOUTH LINE OF BIESTERFIELD ROAD AS OCCUPIED BEING A LINE 60.00 FEET AS MEASURED AT RIGHT ANGLES, SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ ; THENCE SOUTH 88 DEGREES 57 MINUTES 06 SECONDS EAST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , 520.00 FEET TO A LINE 245.00 FEET, AS MEASURED ALONG THE NORTH LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ ; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , 199.99 FEET TO A LINE 260.00 FEET, AS MEASURED ALONG THE EAST LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ ; THENCE SOUTH 88 DEGREES 57 MINUTES 06 SECONDS EAST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , 199.99 FEET TO THE WEST LINE OF ARLINGTON HEIGHTS ROAD AS WIDENED, BEING A LINE 45.00 FEET, AS MEASURED AT RIGHT ANGLES, WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ ; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ ; 793.50 FEET TO THE NORTHEAST CORNER OF LOT 1 IN SERFECZ SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 23, 1984, AS DOCUMENT NUMBER 26939494; THENCE NORTH 88 DEGREES 57 MINUTES 06 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT 1, 125.02 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG THE NORTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 1, 21.39 FEET; THENCE NORTH 88 DEGREES 57 MINUTES 06 SECONDS WEST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , 542.46 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , 137.89 FEET TO A LINE 1170.00 FEET, AS MEASURED ALONG THE EAST LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , SOUTH OF AND PARALLEL WITH THE NORTH

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LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ ; THENCE NORTH 88 DEGREES 57 MINUTES 06 SECONDS WEST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , 97.52 FEET TO A LINE 810.00 FEET AS MEASURED ALONG THE NORTH LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ ; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , 884.99 FEET; THENCE SOUTH 88 DEGREES 57 MINUTES 06 SECONDS EAST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , 45.00 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , 225.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## PARCEL TWO:

NON EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PARKING FOR THE BENEFIT OF PARCEL ONE AS CREATED BY RECIPROCAL EASEMENT AGREEMENT BETWEEN ELK GROVE VILLAGE, ELK GROVE TOWN CENTER, L.L.C. AND THE BOARD OF TRUSTEES OF THE VILLAGE OF ELK GROVE VILLAGE DATED AS OF MARCH 13, 1997 AND RECORDED AUGUST 5, 1997 AS DOCUMENT NUMBER 97566666 OVER THE LAND WEST AND ADJOINING AS DESCRIBED THEREIN.

## PARCEL THREE:

NON EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PARKING FOR THE BENEFIT OF PARCEL ONE AS CREATED BY RECIPROCAL EASEMENT AGREEMENT BETWEEN ELK GROVE TOWN CENTER, L.L.C. AND BEVERLY TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 24, 1997 AND KNOWN AS TRUST NUMBER 74-2478 DATED JULY 25, 1997 AND RECORDED AUGUST 5, 1997 AS DOCUMENT NUMBER 97566670 OVER THE LAND SOUTH AND ADJOINING AS DESCRIBED THEREIN.

PIN: 08-32-202-021-0000

ADDRESS: Elk Grove Town Center  
910 Biesterfield Road  
Elk Grove Village, IL

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## EXHIBIT B

### ORIGINAL LOAN DOCUMENTS

1. Promissory Note dated November 14, 2003 in the amount of \$14,500,000.00.
2. Mortgage, Security Agreement and Fixture Filing dated November 14, 2003 and filed for record on December 2, 2003 as Document No. 0333604054 with the Cook County Recorder of Deeds.
3. Assignment of Leases dated November 14, 2003 and filed for record on December 2, 2003 as Document No. 0333604055 with the Cook County Recorder of Deeds.
4. Borrower's Estoppel Certificate dated November 14, 2003.
5. UCC Financing Statement recorded December 2, 2003 as Document No. 0333604106 with the Cook County Recorder of Deeds.
6. Certification regarding Property Rent Roll dated October 31, 2003.
7. Certified Income Statement for July 2003 through September 2003 and Property Budget for Calendar Year 2004.