

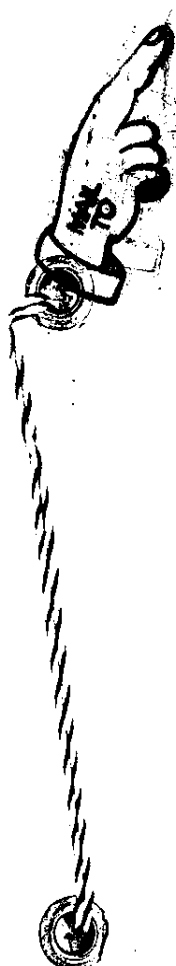
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Upon recordation, return to:
Corey A. Tessler
Winston & Strawn LLP
200 Park Avenue
New York, New York 10166

Doc#: 0422544017
Eugene "Gene" Moore Fee: \$102.50
Cook County Recorder of Deeds
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CONSENT TO ADMISSION, ASSUMPTION, MORTGAGE MODIFICATION
AND
SUBSTITUTION AGREEMENT

Date: As of July 27, 2004

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CONSENT TO ADMISSION, ASSUMPTION, MORTGAGE MODIFICATION AND SUBSTITUTION AGREEMENT

THIS CONSENT TO ADMISSION, ASSUMPTION, MORTGAGE MODIFICATION AND SUBSTITUTION AGREEMENT (this "*Agreement*") is made and entered into as of July 27, 2004, by and among 444 NOMI, INC., a Delaware corporation, with an address of c/o The Andalex Group, 430 Park Avenue, New York, New York 10022 ("*Initial GP*"), HIW ASSOCIATES, LLC, a New York limited liability company ("*Initial LP*"), with an address c/o The Andalex Group, 430 Park Avenue, New York, New York 10022 (Initial GP and Initial LP are collectively, "*Initial Partner*"), 444 PARTNERS LP, a Delaware limited partnership d/b/a in Illinois as 444 PARTNERS, L.P., having an address c/o The Andalex Group, 430 Park Avenue, New York, New York 10022 ("*Borrower*"), WESTWIND 444 NORTH MICHIGAN AVENUE MANAGEMENT, LP, a Delaware limited partnership, with an address c/o WestWind Capital Partners, 3290 Northside Parkway, Suite 675, Atlanta, Georgia 30327 ("*New GP*"), KAN AM GRUND KAPITALANLAGEGESELLSCHAFT mbH, a German limited liability company, with an address c/o WestWind Capital Partners, 3290 Northside Parkway, Suite 675, Atlanta, Georgia 30327 ("*New LP*" and/or "*Assuming Indemnitor*") and ALLEN SILVERMAN, having an address c/o The Andalex Group, 430 Park Avenue, New York, New York 10022 ("*Original Indemnitor*") in favor of WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association, whose mailing address is 301 South Tryon Street, PMB 35-123, Charlotte, North Carolina 28282 for overnight deliveries ("*Lender*").

Recitals

A. Lender, pursuant to the Loan Documents (as hereinafter defined) made a loan to Borrower in the original principal amount of \$73,000,000.00, which has been paid down to \$71,500,000.00 on the date hereof (the "*Loan*"). The Loan is evidenced and secured by the following documents executed in favor of Lender by Borrower:

- (1) Promissory Note dated July 9, 2004, payable by Borrower to Lender in the original principal amount of \$73,000,000.00 (the "*Note*");
- (2) Mortgage and Security Agreement of even date with the Note, granted by Borrower to Lender (the "*Mortgage*"), recorded in the real estate records of Cook County, Illinois ("*Recorder's Office*");
- (3) Assignment of Leases and Rents and Security Deposits of even date with the Note granted by Borrower to Lender, recorded in the Recorder's Office (the "*Assignment*");
- (4) UCC-1 financing statements with Borrower as debtor and Lender as secured party, filed with the Recorder's Office and with the Secretary of State of the State of Delaware (collectively the "*Financing Statements*");
- (5) Cash Management Agreement by and between Borrower and Lender (the "*CCA*");
- (6) Indemnity and Guaranty Agreement by Original Indemnitor in favor of Lender of even date with the Note (the "*Indemnity Agreement*"); and
- (7) Hazardous Substances Indemnity Agreement by and between Borrower and Original Indemnitor in favor of Lender of even date with the Note.

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The foregoing documents, together with any and all other documents executed by Borrower and/or Original Indemnitor in connection with the Loan, are collectively called the "*Loan Documents*." As used herein, the term "*Assuming Obligors*" shall mean the Reconstituted Borrower (hereinafter defined) with respect to the obligations of Borrower under the Loan Documents, and Assuming Indemnitor with respect to the obligations of Original Indemnitor under the Loan Documents that constitute the Indemnity Agreement and the Hazardous Substances Indemnity Agreement; the term "*Original Obligors*" shall mean Borrower, Initial GP, Initial LP and Original Indemnitor.

- B. Borrower continues to be the owner of the Property (as defined in the Mortgage).
- C. Initial Partner, New LP and WestWind Capital Partners, LP, an affiliate of New LP and Borrower, have entered into a certain Contribution Agreement, dated July __, 2004 (the "*Contribution Agreement*"), pursuant to which (i) the parties have agreed to change the name of the Borrower to Kan Am 444 North Michigan Avenue, LP ("*Reconstituted Borrower*"), (ii) New GP, upon execution of an Amended and Restated Agreement of Limited Partnership of Kan Am 444 North Michigan Avenue, LP (the "*Amended Partnership Agreement*"), will be admitted as the sole general partner of Borrower and will then hold a 0.1% interest as general partner of Reconstituted Borrower, (iii) Initial GP will transfer its interest in Borrower to Initial LP and will withdraw as a partner in Borrower, (iv) New LP, upon execution of the Amended Partnership Agreement, will be admitted as a limited partner in Reconstituted Borrower and will thereafter hold an 89.90% limited partner interest in Reconstituted Borrower, and (v) Initial LP shall retain a 10.00% limited partner interest in Reconstituted Borrower (said transactions are herein collectively referred to as the "*Transaction*"). Borrower, Reconstituted Borrower, Original Indemnitor, New GP, New LP and Initial Partner have requested that Lender consent to the Transaction.
- D. Pursuant to Section 1.13 of the Mortgage, Borrower has certain transfer rights with respect to the Property subject to the satisfaction of certain conditions specified therein. Borrower and Reconstituted Borrower have requested that Lender consent to the Transaction and the name change to the Reconstituted Borrower, subject to the Mortgage and the other Loan Documents, and to the assumption by Assuming Obligors of the obligations of Original Obligors under the Loan Documents.
- E. Lender is willing to consent to the Transaction and the name change to the Reconstituted Borrower, subject to the Mortgage and the other Loan Documents, and to the assumption by Assuming Obligors of the obligations of Original Obligors under the Loan Documents, and subject to the terms and conditions set forth in this Agreement and in the Mortgage and in the other Loan Documents.
- F. Lender, Original Obligors, Assuming Obligors, New LP and New GP by their respective executions hereof, evidence their consent to the Transaction and the name change to the Reconstituted Borrower and the modification and assumption of the Loan Documents as hereinafter set forth.

Statement of Agreement

In consideration of the mutual covenants and agreements set forth herein, the parties hereto hereby agree as follows:

1. Representations, Warranties, and Covenants of Original Obligors, Release of Lender.

- (a) Borrower hereby represents to Lender, as of the date hereof, that (i) simultaneously with the execution and delivery hereof, Borrower has changed its name to the Reconstituted Borrower and Initial GP and Initial LP have completed the Transaction; (ii) the Mortgage is a valid first lien on the Property for the full unpaid principal amount of the Loan and all other amounts as

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stated therein; (iii) there are no defaults by Original Obligor under the provisions of the Loan Documents; (iv) there are no defenses, set-offs or rights of defense, set-off or counterclaim whether legal, equitable or otherwise to the obligations evidenced by or set forth in the Loan Documents; (v) all provisions of the Loan Documents are in full force and effect, except as modified herein; (vi) there are no subordinate liens of any kind covering or relating to the Property nor are there any mechanics' liens or liens for unpaid taxes or assessments encumbering the Property, nor has notice of a lien or notice of intent to file a lien been received; and (vii) the representations and warranties made by Original Obligor in the Loan Documents or in any other documents or instruments delivered in connection with the Loan Documents, including, without limitation, all representations and warranties with respect to environmental matters, are true, on and as of the date hereof, with the same force and effect as if made on and as of the date hereof.

(b) Original Obligor hereby covenant and agree that: (i) from and after the date hereof, Lender may deal solely with Assuming Obligor in all matters relating to the Loan, the Loan Documents and the Property; (ii) they shall not at any time hereafter take (x) a mortgage or other lien encumbering the Property or (y) a pledge of direct or indirect interests in Reconstituted Borrower from Assuming Obligor to secure any sums to be paid or obligations to be performed by Assuming Obligor so long as any portion of the Loan remains unpaid; and (iii) Lender has no further duty or obligation of any nature relating to the Loan or the Loan Documents to Original Obligor.

Original Obligor understand and intend that Lender shall rely on the representations, warranties and covenants contained herein.

2. Representations, Warranties, and Covenants of Assuming Obligor.

(a) Assuming Obligor hereby represent and warrant to Lender, as of the date hereof, that: (i) simultaneously with the execution and delivery hereof, the Borrower's name has been changed to the Reconstituted Borrower; (ii) the Transaction has been completed; (iii) Reconstituted Borrower has not granted to Borrower (x) a mortgage or other lien upon the Property or (y) a pledge of direct or indirect interests in the Reconstituted Borrower to secure any debt or obligations owed to Borrower; (iv) to the knowledge of Assuming Obligor, no Default or Event of Default (each as defined in the Mortgage) has occurred or is continuing; (v) to the knowledge of Assuming Obligor, all provisions of the Loan Documents are in full force and effect; (vi) to the knowledge of Assuming Obligor, the representations and warranties made in the Loan Documents or in any other documents or instruments delivered in connection with the Loan Documents, as modified hereby, are true, on and as of the date hereof; and (vii) Assuming Obligor have reviewed all of the Loan Documents and consent to the terms thereof.

(b) Reconstituted Borrower shall not hereafter, without Lender's prior consent in accordance with the terms of the Loan Documents, further encumber the Property or sell or transfer the Property or any interest therein, except as may be specifically permitted in the Loan Documents. Assuming Obligor have no knowledge that any of the representations and warranties made by the Original Obligor herein are untrue, incomplete, or incorrect.

(c) Assuming Indemnitor hereby represents and warrants to the Lender that Assuming Indemnitor is an affiliate of the Reconstituted Borrower and Assuming Indemnitor will derive substantial economic benefit from the Lender's agreement to consent to the transaction described herein. The Assuming Indemnitor hereby acknowledges and agrees that the Assuming Indemnitor has executed this Agreement and agreed to be bound by the covenants and agreements set forth herein in order to induce the Lender to consent to the transaction described herein. Accordingly, the Assuming Indemnitor acknowledges that the Lender would not consent to the transaction described herein without the execution and delivery by the Assuming Indemnitor of this Agreement.

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Assuming Obligors understand and intend that Lender shall rely on the representations, warranties and covenants contained herein.

3. **Assumption of Obligations of Borrower.** By virtue of the Transaction and name change, Reconstituted Borrower hereby assumes the Debt (as defined in the Mortgage) and all other obligations under the Mortgage, and Reconstituted Borrower hereby assumes all the other respective past, present and future obligations of Borrower of every type and nature set forth in the Loan Documents in accordance with their respective terms and conditions, as the same may be modified by this Agreement. Reconstituted Borrower further agrees to abide by and be bound by all of the terms of the Loan Documents applicable to the "Borrower", in accordance with their respective terms and conditions, including but not limited to, the representations, warranties, covenants, assurances and indemnifications therein, all as though each of the Loan Documents had been made, executed, and delivered by Reconstituted Borrower. Reconstituted Borrower agrees to pay when and as due all sums due under the Note and agrees to pay, perform, and discharge each and every other obligation of payment and performance of the "Borrower" pursuant to and as set forth in the Loan Documents at the time, in the manner and otherwise in all respects as therein provided. Subject to the provisions of Section 2.6 of the Note, the foregoing assumption by Reconstituted Borrower is absolute and unconditional, is not subject to any defenses, waivers, claims or offsets nor may it be affected or impaired by any agreement, condition, statement or representation of Borrower or any borrower or any failure to perform the same and that Reconstituted Borrower hereby relinquishes, waives and releases any and all such defenses, claims, offsets, and causes of action. Reconstituted Borrower hereby acknowledges, agrees and warrants that (i) there are no rights of set-off or counterclaim, no any defenses of any kind, whether legal, equitable or otherwise, which would enable Reconstituted Borrower to avoid or delay timely performance of their obligations under the Loan Documents, as applicable; (ii) there are no monetary encumbrances or liens of any kind or nature against the Property except those created by the Loan Documents, and all rights, priorities, titles, liens and equities securing the payment of the Note are expressly recognized as valid and are in all things renewed, continued and preserved in force to secure payment of the Note, except as amended herein; (iii) upon the occurrence of certain acts or conditions that are more particularly set forth in Section 2.6(d) of the Note, Reconstituted Borrower will be personally liable for losses, and in some events the Debt will be fully recourse to Reconstituted Borrower, and Lender's remedies shall not in any respect or extent be limited solely to the Property or any other collateral securing the obligation.

4. **Assumption of the Obligations of the Indemnitor under the Indemnity Agreement; Substitution of Indemnitor.** From and after the date of this Agreement, the Assuming Indemnitor shall be obligated and responsible for the performance of each and all of the obligations and agreements of the "Indemnitor", "Guarantor" and/or "Principal" (collectively referred to herein as "Indemnitor") under the Indemnity and Guaranty Agreement and the Hazardous Substances Indemnity Agreement, and the Assuming Indemnitor shall be liable and responsible from and after the date hereof for each and all of the liabilities of the Indemnitor thereunder first arising from and after the date hereof, and shall be substituted in lieu of and in place of the Original Indemnitor, as fully and completely as if the Assuming Indemnitor had originally executed and delivered such Loan Documents as the Indemnitor thereunder, including, without limitation, all of those obligations, agreements and liabilities which would have, but for the provisions of this Agreement, been the obligations, agreements and liabilities of the Original Indemnitor to the extent first arising from and after the date hereof. From and after the date hereof, the Assuming Indemnitor further agrees to abide by and be bound by all of the terms of the Loan Documents having reference to the Indemnitor to the extent first arising from and after the date hereof, all as though each of the Loan Documents to which the Original Indemnitor is a party had been made, executed, and delivered by the Assuming Indemnitor as the Indemnitor; provided, further, Assuming Indemnitor hereby agrees that at all times during the term of the Loan it shall maintain a minimum net worth of no less than three million euros (€3,000,000). From and after the date hereof, the Assuming Indemnitor hereby agrees to pay, perform, and discharge each and every obligation of payment and performance of the Indemnitor

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under, pursuant to and as set forth in the Loan Documents at the time, in the manner and otherwise in all respects as therein provided, but only to the extent such obligations first arise from and after the date hereof.

5. **Notices to Indemnitor.** Without amending, modifying or otherwise affecting the provisions of the Loan Documents except as expressly set forth herein, the Lender shall, from and after the date of this Agreement, deliver any notices to the Assuming Indemnitor which are required to be delivered pursuant to the Loan Documents, or are otherwise delivered by the Lender thereunder at Lender's sole discretion, to the Assuming Indemnitor's address set forth above.

6. **Consent to Admission, Assumption and Substitution of Indemnitor; Release of Original Obligors.** Subject to the terms and conditions set forth in this Agreement, Lender consents to: (a) the Transaction, subject to the Mortgage and the other Loan Documents; (b) the assumption by Reconstituted Borrower of the Loan and the obligations of Borrower under the Loan Documents, subject to the provisions of Section 2.6 of the Note; and (c) the assumption by Assuming Indemnitor of the obligations of the Original Indemnitor under the Loan Documents to which Original Indemnitor is a party to the extent first arising from and after the date hereof. The Original Obligors are hereby released from any and all liability to Lender under any and all of the Loan Documents arising or first accruing subsequent to the Transaction and the assumption by Reconstituted Borrower and Assuming Indemnitor hereunder. Lender's consent to such Transaction and assumption shall, however, not constitute its consent to any subsequent transfers of the Property. Original Obligors hereby acknowledge and agree that the foregoing release shall not be construed to release Original Obligors from any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising prior to or simultaneously with the closing of the Transaction.

7. **Release and Covenant Not to Sue.** In consideration of Lender's agreement to enter into this Agreement, Original Obligors, Assuming Obligors, New LP and New GP hereby agree as follows:

(a) **General Release and Waiver of Claims.** Original Obligors, Assuming Obligors, New LP and New GP hereby jointly and severally release and forever discharge Wachovia Bank, National Association, Lender, any master servicer, subservicer, and their respective successors, assigns, partners, directors, officers, agents, attorneys, administrators, trustees, subsidiaries, affiliates, beneficiaries, shareholders, representatives, agents, servants, participants and employees, (collectively, the "*Lender Parties*"), from any and all rights, proceedings, agreements, contracts, judgments, debts, costs, expenses, promises, duties, claims, demands, cross-actions, controversies, causes of action, damages, rights, liabilities and obligations, at law or in equity whatsoever, known or unknown, suspected or unsuspected, choate or inchoate, whether past, present or future, now held, owned or possessed by Original Obligors, Assuming Obligors, New LP and/or New GP, or which Original Obligors, Assuming Obligors, New LP and/or New GP may hereafter hold or claim to hold from the beginning of time to the date of this Agreement under common law or statutory right, known or unknown, arising, directly or indirectly, proximately or remotely, out of the Property, the Loan or any of the Loan Documents or any of the documents, instruments or any other transactions relating thereto or the transactions contemplated thereby including, without limitation, any and all rights, proceedings, agreements, contracts, judgments, debts, expenses, promises, duties, claims, demands, cross-actions, controversies, causes of action, damages, rights, liability and obligations whether based upon tort, fraud, breach of any duty of fair dealing, breach of confidence, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any claim for wrongfully accelerating the Note or wrongfully attempting to foreclose on any collateral relating to the Note, contract or usury, but only to the extent that the foregoing arise in connection with events which occurred prior to

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the date of this Agreement (collectively, the "**Released Claims**"). Without limiting the generality of the foregoing, this release shall include the following matters: (a) all aspects of this Agreement, the Note, the Mortgage, the Assignment, the other Loan Documents and the negotiations between or on behalf of Assuming Obligors, Original Obligors, New LP and/or New GP and Lender and the demands and requests by Lender of Original Obligors, Assuming Obligors, New LP or New GP concerning this Agreement and the other Loan Documents, including, but not limited to, all meetings, telephone calls, correspondence and/or other contacts among or on behalf of Assuming Obligors, , New LP, New GP and/or Original Obligors and Lender incident to the attempts of said parties to reach an Agreement, or in connection with the Note, the Mortgage, the Assignment, the CCA, or the other Loan Documents and the attempt(s) of Lender to collect the Note, and (b) the exercise by Lender of its rights under any of the Loan Documents or any of its rights under this Agreement, the Note, the Mortgage, the Assignment, the Loan Documents or at law or in equity.

(b) This release is intended to release all liability of any character claimed for damages, of any type or nature, for injunctive or other relief, for attorneys' fees, interest or any other liability whatsoever, whether statutory, or contractual or tort in character, or of any other nature or character, now or henceforth in any way related to any and all matters and dealings of any nature whatsoever asserted or assertable by or on behalf of Assuming Obligors, , New LP, New GP and/or Original Obligors against Lender, including, without limitation, any loss, cost or damage in connection with, or based upon, any breach of fiduciary duty, breach of any duty of fair dealing or good faith, breach of confidence, breach of funding commitment, breach of any other duty, breach of any statutory right, fraud, usury, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with corporate or other governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any other cause of action, but only to the extent that the foregoing arise in connection with events which occurred prior to the date of execution hereof.

(c) Assuming Obligors, New LP, New GP and Original Obligors each understand and agree that this is a full, final and complete release and agree that this release may be pleaded as an absolute and final bar to any or all suit or suits pending or which may thereafter be filed or prosecuted by Assuming Obligors, New LP, New GP or Borrower, or anyone claiming by, through or under Assuming Obligors, New LP, New GP or Borrower, in respect of any of the matters released hereby, and that no recovery on account of the matters described herein may hereafter be had from anyone whomsoever, and that the consideration given for this release is no admission of liability and that neither Assuming Obligors nor Original Obligors, will ever claim that it is.

8. **Acknowledgment of Indebtedness.** This Agreement recognizes the reduction of the principal amount of the Note and the payment of interest thereon to the extent of payments made by Borrower prior to or upon the date of execution of this Agreement. The parties acknowledge and agree that, as of the date of this Agreement, the principal balance of the Note is \$71,500,000.00, interest on the Note is paid to July 10, 2004, the maturity date of the Note is July 11, 2014, and all payments due under the Note are current. Reconstituted Borrower acknowledges and agrees that the Loan, as evidenced and secured by the Loan Documents, is a valid and existing indebtedness payable by Reconstituted Borrower to Lender. The parties acknowledge that Lender is holding the following escrow and/or reserve balances:

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Tax and Insurance Impound Account:	\$705,185.85
Replacement Reserve:	\$0
Payment Reserve:	\$0
Leasing Reserve	\$0
Retail Rent Reserve	\$468,093
Build-Out Reserve	\$425,000

The parties acknowledge and agree that Lender shall continue to hold the escrow and reserve balances for the benefit of Reconstituted Borrower in accordance with the terms of the Loan Documents. Original Obligors covenant and agree that the Lender Parties have no further duty or obligation of any nature to Original Obligors relating to such escrow and/or reserve balances. Original Obligors hereby release and forever discharge the Lender Parties from any obligations to Original Obligors relating to such escrow and/or reserve balances. Assuming Obligors, New LP and New GP acknowledge and agree that the funds listed above constitute all of the reserve and escrow funds currently held by Lender with respect to the Loan and authorize such funds to be retained in the current account controlled by Lender for the benefit of Lender and Reconstituted Borrower.

The parties further acknowledge and agree that Lender shall direct the Bank (as defined in the CCA) to continue to hold and manage the accounts established pursuant to the CCA for the benefit of Reconstituted Borrower in accordance with the terms thereof. Original Obligors covenant and agree that the Bank and Lender Parties have no further duty or obligation of any nature to Original Obligors relating to such accounts. Original Obligors hereby release and forever discharge the Bank and Lender Parties from any obligations to Original Obligors relating to such accounts.

9. Modifications of the Loan Documents. The Mortgage is hereby modified as follows:

(a) The introductory paragraph of the Mortgage is hereby modified to substitute the name and address (as listed above) of Reconstituted Borrower, as Borrower, in place of the Borrower names and addresses set forth therein.

(b) Section 4.5 of the Mortgage is hereby deleted in its entirety and the following substituted in its stead:

"4.5. Notices. All notices, demands, requests or other written communications hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee addressed as follows:

If to Borrower: Kan Am 444 North Michigan Avenue, LP
 c/o WestWind Capital Partners, LP
 3290 Northside Parkway
 Suite 675
 Atlanta, Georgia 30327
 Attention: Stephen D. McCarthy

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With a copy to: KanAm 444 North Michigan Avenue, LP
 c/o Westwind Capital Partners, LP
 3290 Northside Parkway
 Suite 675
 Atlanta, GA 30327
 Attention: Jennifer S. Ross

With a copy to: King & Spalding LLP
 Attention: W. Clay Gibson
 191 Peachtree Street
 Atlanta, Georgia 30303-1763

If to Lender: Wachovia Bank, National Association
 301 South Tryon Street, PMB 35-123
 Charlotte, North Carolina 28282
 Attention: Capital Markets Group

with a copy to: Winston & Strawn LLP
 Attention: Corey A. Tessler
 200 Park Avenue
 New York, New York 10166

All notices, demands and requests to be sent to Lender shall be addressed to the attention of the Capital Markets Group. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

(c) The sentence in Section 1.13(a) commencing with the words "For purposes hereof, control shall not be deemed to have change so long as any of Allen Silverman" through and continuing "or Alex Silverman or Andrew Silverman controls the entity." is hereby deleted.

(d) The amount "\$5,000,000.00" in Section 5(f) of the Indemnity Agreement is deleted and "€3,000,000 euros" is inserted in lieu thereof.

(e) Section 5(k) of the Indemnity Agreement is hereby amended by adding the following:

"Indemnitor hereby designates CT Corporation System, having an office at 208 South LaSalle Street, Suite 814, Chicago, Illinois 60604, as the agent for the service of process of any notices, demands, requests or other communications to be sent to Indemnitor hereunder or required by law."

10. **Interest Accrual Rate and Monthly Payment Amount to Remain the Same.** The interest rate and the monthly payments set forth in the Note shall remain unchanged. Provided there exists no Event of Default hereunder or under the Note, interest shall accrue on the principal balance outstanding from time to time at the Interest Rate (as defined in the Note) and principal and interest

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(which does not include such amounts as may be required to fund escrow obligations under the terms of the Loan Documents) shall continue to be paid in accordance with the provisions of the Note.

11. **Conditions.** This Agreement shall be of no force and effect until each of the following conditions has been met to the complete satisfaction of Lender:

(a) **Fees and Expenses.** Borrower and/or Reconstituted Borrower shall pay, or cause to be paid at closing: (i) all costs and expenses incident to the preparation, execution and recordation hereof and the consummation of the transaction contemplated hereby, including, but not limited to, recording fees, filing fees, surveyor fees, broker fees, transaction or mortgage taxes, rating agency confirmation fees, application fees, all third party fees, search fees, transaction fees, inspection fees, title insurance policy or endorsement premiums or other charges of Title Company and the fees and expenses of legal counsel to any Lender Party and any applicable rating agency and (ii) an application fee to Lender in the amount of \$5,000, and the other fees and expenses outlined in the beneficiary statement distributed to the parties by Lender.

(b) **Other Conditions.** Satisfaction of all requirements under the Loan Documents and the closing checklist for this transaction as determined by Lender and Lender's counsel in their sole discretion.

12. **Default.**

(a) **Breach.** Any breach by Assuming Obligors or Original Obligors of any of the representations and warranties contained herein shall constitute an Event of Default under the Mortgage and each other Loan Document.

(b) **Failure to Comply.** Any failure of Assuming Obligors or Original Obligors to fulfill any one of the conditions set forth in this Agreement shall constitute a default under this Agreement and the Loan Documents.

13. **No Further Consents.** Assuming Obligors, New LP, New GP and Original Obligors acknowledge and agree that Lender's consent herein contained is expressly limited to the Transaction, that such consent shall not waive or render unnecessary Lender's consent or approval of any subsequent sale, conveyance, admission, assignment or transfer of the Property, and that Section 1.13 of the Mortgage shall continue in full force and effect.

14. **Additional Representations, Warranties and Covenants of Assuming Obligors.** As a condition of this Agreement, Assuming Obligors represent and warrant to Lender as follows:

(a) Reconstituted Borrower is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business and in good standing in the State of Illinois. Reconstituted Borrower has full power and authority to enter into and carry out the terms of this Agreement and to assume and carry out the terms of the Loan Documents.

(b) Assuming Indemnitor is a limited liability company duly organized and validly existing in good standing under the laws of Germany and is authorized to transact business as a foreign corporation in each jurisdiction in which such authorization is necessary for the operation of the business or properties of Reconstituted Borrower. New GP is, and shall remain, the general partner of Reconstituted Borrower and has full power and authority to enter into this Agreement as general partner of Reconstituted Borrower, and to execute this Agreement.

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(c) This Agreement and the Loan Documents constitute legal, valid and binding obligations of Assuming Obligors enforceable in accordance with their respective terms. Neither the entry into nor the assumption and performance of and compliance with this Agreement or any of the Loan Documents has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which Assuming Obligors or any property of Assuming Obligors are bound or any statute, rule or regulation applicable to Assuming Obligors.

(d) There is no action, proceeding or investigation pending or threatened which questions, directly or indirectly, the validity or enforceability of this Agreement or any of the other Loan Documents, or any action taken or to be taken pursuant hereto or thereto, or which might result in any material adverse change in the condition (financial or otherwise) or business of Assuming Obligors.

(e) There has been no legislative action, regulatory change, revocation of license or right to do business, fire, explosion, flood, drought, windstorm, earthquake, accident, other casualty or act of God, labor trouble, riot, (vii) commotion, condemnation or other action or event which has had any material adverse effect, on the business or condition (financial or otherwise) of Assuming Obligors or any of their properties or assets, whether insured against or not, since Assuming Obligors submitted to Lender their request to assume the Loan.

(f) The financial statements and other data and information supplied by Assuming Obligors in connection with Assuming Obligors' request to approve the Transaction or otherwise supplied in contemplation of the Transaction were in all material respects true and correct on the dates they were supplied, and since their dates no material adverse change in the financial condition of Assuming Obligors has occurred, and there is not any pending or threatened litigation or proceedings which might impair to a material extent the business or financial condition of Assuming Obligors.

(g) Assuming Obligors expressly agree that they have read and approved of and will comply with and be bound by all of the terms, conditions, and provisions contained in the Mortgage, Note and other Loan Documents as amended by this Agreement.

(h) Without limiting the generality of the assumption of the Loan Documents by Assuming Obligors, Assuming Obligors hereby specifically remake and reaffirm the representations, warranties and covenants set forth in the Mortgage and the Indemnity Agreement.

(i) No representation or warranty of Assuming Obligors made in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make such representations and warranties not misleading in light of the circumstances under which they are made.

(j) Reconstituted Borrower hereby represents and warrants to Lender that Reconstituted Borrower will not permit the transfer of any interest in Reconstituted Borrower to any person or entity (or any beneficial owner of such entity) who is listed on the specifically Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) an/or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of Office of Foreign Asset Control, Department of the Treasury or pursuant to any other applicable Executive Orders (such lists are collectively referred to as the "OFAC Lists"). Reconstituted Borrower will not knowingly enter into a lease with any party who is listed on the OFAC Lists. Reconstituted Borrower shall immediately notify Lender if Reconstituted Borrower has knowledge that any member of beneficial owner of Reconstituted Borrower is listed on the OFAC Lists or (A) is indicted on or (B) arraigned and

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held over on charges involving money laundering or predicate crimes to money laundering. Reconstituted Borrower shall immediately notify Lender if Reconstituted Borrower knows that any tenant is listed on the OFAC Lists or (A) is convicted on, (B) pleads nolo contendere to, (C) is indicted on or (D) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Reconstituted Borrower further represents and warrants to Lender that Reconstituted Borrower is currently not on the OFAC list.

(k) At Closing, Reconstituted Borrower shall (i) cause Lawyers Title Insurance Corporation to issue to Lender a copy of the owner's title insurance policy being issued to Reconstituted Borrower, showing that the Lender's Mortgage, Assignment and Financing Statements are the only monetary liens of record against the Property, and (ii) pay the cost of any escrow, filing or recording fees applicable to this transaction, and Lender's costs and expenses incurred in connection with this Agreement or this transaction, including without limitation, Lender's reasonable attorneys' fees, if any, incurred in connection with this Agreement or this transaction.

(l) All representations and warranties of Assuming Obligors referred to herein shall be true as of the date of this Agreement as contemplated hereby ("*Closing*") and shall survive Closing.

(m) Assuming Indemnitor agrees to submit to personal jurisdiction in the State of Illinois in any action or proceeding arising out of this Agreement and, in furtherance of such Agreement, Assuming Indemnitor hereby designates CT Corporation System, having an office at 208 South LaSalle Street, Suite 814, Chicago, Illinois 60604, as the agent for the service of process any such action or proceeding.

15. **Additional Representations, Warranties and Covenants of Original Obligors.** As a condition of this Agreement, Borrower represents and warrants to Lender as follows:

(a) Borrower is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business and in good standing in the State of Illinois. Borrower has full power and authority to enter into and carry out the terms of this Agreement and to convey the Property and assign the Loan Documents.

(b) Initial GP is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and is authorized to transact business as a foreign corporation in each jurisdiction in which such authorization is necessary for the operation of the business or properties of Borrower. Initial GP is the sole General Partner of Borrower and has full power and authority to enter into this Agreement as General Partner on behalf of Borrower, and to execute this Agreement.

(c) Original Indemnitor is a resident of the State of New York and is legally competent to execute this Agreement.

(d) This Agreement and all other documents executed by Original Obligors in connection therewith constitute legal, valid and binding obligations of Original Obligors enforceable in accordance with their respective terms. Neither the entry into nor the performance of and compliance with this Agreement, the Sales Agreement and all other documents executed by Original Obligors in connection therewith has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which Original Obligors or any property of Original Obligors are bound or any statute, rule or regulation applicable to Original Obligors.

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(e) Original Obligors have not received any written notices from any governmental entity claiming that Original Obligors or the Property is not presently in compliance with any laws, ordinances, rules, and regulations bearing upon the use and operation of the Property, including, without limitation, any notice relating to zoning laws or building code regulations.

(f) The Certified Rent Roll provided to Lender of even date herewith, is a true, complete and accurate summary of all tenant leases ("*Tenant Leases*" or individually a "*Tenant Lease*") affecting the Property as of the date of this Agreement. No rent has been prepaid under any Tenant Lease except for the current month. Each Tenant Lease has been duly executed and delivered by, and, to the knowledge of Borrower, is a binding obligation of, the respective tenant, and each Tenant Lease is in full force and effect. Each Tenant Lease represents the entire agreement between the landlord and the respective tenant and no Tenant Lease has been terminated, renewed, amended, modified or otherwise changed without the prior written consent of Lender as provided in the Loan Documents. Except as disclosed in the Certified Rent Roll, the tenant under each Tenant Lease has taken possession of and is in occupancy of the premises therein described and is open for business. Except as disclosed in the Certified Rent Roll, rent payments have commenced under each Tenant Lease, and all tenant improvements in such premises and other conditions to occupancy and/or rent commencement have been completed by Landlord. All current obligations of the landlord under the Tenant Leases have been performed, and no event has occurred and no condition exists that, with the giving of notice or lapse of time or both, would constitute a default by Landlord under any Tenant Lease. There are no offsets or defenses that any tenant has against the full enforcement of any Tenant Lease by the landlord thereunder. Each Tenant Lease is fully and freely assignable by the landlord without notice to or the consent of the tenant thereunder.

(g) Borrower is the current owner of the Property. There are no pending or, to Borrower's knowledge, threatened suits, judgments, arbitration proceeding, administrative claims, executions or other legal or equitable actions or proceedings against Original Obligors or the Property or any pending or threatened condemnation or annexation proceedings affecting the Property, or any agreements to convey any portion of the Property, or any rights therein, to, not disclosed in this Agreement, including, without limitation to any governmental agency.

(h) Borrower has examined the ALTA, As-Built Survey (the "*Survey*") performed on the Property in connection with the closing of the Loan. As an inducement to Lender to consent to the transaction described herein without requiring an update to the Survey, Borrower represents to Lender that there have been no improvements added at the Property and that there have been no encroachments made upon nor structural alterations made to the Property from the date of the Survey to the present.

(i) Borrower represents and warrants that to the best of its knowledge (i) at the time of the Transaction, all outstanding and due taxes and assessments against the Property have been paid, (ii) the next payment for real property taxes on the Property, which will be for such taxes is due October 1, 2004, (iii) all insurance required by the Mortgage (the "*Required Insurance*") is currently maintained on the Property and such policy contains the non-contributory New York Standard Mortgagee Clause or its equivalent in favor of Lender, and (iv) all insurance premiums on the Required Insurance have been paid.

(j) No representation or warranty of Original Obligors made in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make such representations and warranties not misleading in light of the circumstances under which they are made.

(k) All representations and warranties of Original Obligors referred to herein shall be true as of the date of this Agreement and the Closing and shall survive Closing.

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16. Compliance with ERISA. Reconstituted Borrower and Assuming Indemnitor represent and warrant as follows:

(a) The assets of Reconstituted Borrower and Assuming Indemnitor are not and will not become treated as "plan assets", whether by operation of law or under regulations promulgated under ERISA. Each Plan and Welfare Plan, and, to the knowledge of Reconstituted Borrower, each Multiemployer Plan, is in compliance in all material respects with, and has been administered in all material respects in compliance with, its terms and the applicable provisions of ERISA, the Code and any other applicable Legal Requirement, and no event or condition has occurred and is continuing as to which Reconstituted Borrower would be under an obligation to furnish a report to Lender under clause (ii)(A) of this Section. Other than an application for a favorable determination letter with respect to a Plan, there are no pending issues or claims before the Internal Revenue Service, the United States Department of Labor or any court of competent jurisdiction related to any Plan or Welfare Plan under which Reconstituted Borrower, Assuming Indemnitor or any ERISA Affiliate, directly or indirectly (through an indemnification agreement or otherwise), could be subject to any material risk of liability under Section 409 or 502(i) of ERISA or Section 4975 of the Code. No Welfare Plan provides or will provide benefits, including, without limitation, death or medical benefits (whether or not insured) with respect to any current or former employee of Reconstituted Borrower, Assuming Indemnitor or any ERISA Affiliate beyond his or her retirement or other termination of service other than (A) coverage mandated by applicable law, (B) death or disability benefits that have been fully provided for by fully paid up insurance or (C) severance benefits.

(b) Reconstituted Borrower will furnish to Lender as soon as possible, and in any event within ten (10) days after Reconstituted Borrower knows or has reason to believe that any of the events or conditions specified below with respect to any Plan, Welfare Plan or Multiemployer Plan has occurred or exists, an Officer's Certificate setting forth details respecting such event or condition and the action, if any, that Reconstituted Borrower or its ERISA Affiliate proposes to take with respect thereto (and a copy of any report or notice required to be filed with or given to PBGC (or any other relevant Governmental Authority) by Reconstituted Borrower or an ERISA Affiliate with respect to such event or condition, if such report or notice is required to be filed with the PBGC or any other relevant Governmental Authority:

(1) any reportable event, as defined in Section 4043 of ERISA and the regulations issued thereunder, with respect to a Plan, as to which PBGC has not by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event (provided that a failure to meet the minimum funding standard of Section 412 of the Code and of Section 302 of ERISA, including, without limitation, the failure to make on or before its due date a required installment under Section 412(m) of the Code and of Section 302(e) of ERISA, shall be a reportable event regardless of the issuance of any waivers in accordance with Section 412(d) of the Code), and any request for a waiver under Section 412(d) of the Code for any Plan;

(2) the distribution under Section 4041 of ERISA of a notice of intent to terminate any Plan or any action taken by Reconstituted Borrower or an ERISA Affiliate to terminate any Plan;

(3) the institution by PBGC of proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by Reconstituted Borrower or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by PBGC with respect to such Multiemployer Plan;

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(4) the complete or partial withdrawal from a Multiemployer Plan by Reconstituted Borrower or any ERISA Affiliate that results in liability under Section 4201 or 4204 of ERISA (including the obligation to satisfy secondary liability as a result of a purchaser default) or the receipt by Reconstituted Borrower or any ERISA Affiliate of notice from a Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A of ERISA;

(5) the institution of a proceeding by a fiduciary of any Multiemployer Plan against Reconstituted Borrower or any ERISA Affiliate to enforce Section 515 of ERISA, which proceeding is not dismissed within thirty (30) days;

(6) the adoption of an amendment to any Plan that, pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA, would result in the loss of tax-exempt status of the trust of which such Plan is a part if Reconstituted Borrower or an ERISA Affiliate fails to timely provide security to the Plan in accordance with the provisions of said Sections; or

(7) the imposition of a Lien or a security interest in connection with a Plan.

(c) Reconstituted Borrower shall not knowingly engage in or permit any transaction in connection with which Reconstituted Borrower, Assuming Indemnitor or any ERISA Affiliate could be subject to either a civil penalty or tax assessed pursuant to Section 502(i) or 502(l) of ERISA or Section 4975 of the Code, permit any Welfare Plan to provide benefits, including without limitation, medical benefits (whether or not insured), with respect to any current or former employee of Reconstituted Borrower, Assuming Indemnitor or any ERISA Affiliate beyond his or her retirement or other termination of service other than (A) coverage mandated by applicable law, (B) death or disability benefits that have been fully provided for by paid up insurance or otherwise or (C) severance benefits, permit the assets of Reconstituted Borrower or Assuming Indemnitor to become "plan assets", whether by operation of law or under regulations promulgated under ERISA or adopt, amend (except as may be required by applicable law) or increase the amount of any benefit or amount payable under, or permit any ERISA Affiliate to adopt, amend (except as may be required by applicable law) or increase the amount of any benefit or amount payable under, any employee benefit plan (including, without limitation, any employee welfare benefit plan) or other plan, policy or arrangement, except for normal increases in the ordinary course of business consistent with past practice that, in the aggregate, do not result in a material increase in benefits expense to Reconstituted Borrower, Assuming Indemnitor or any ERISA Affiliate.

17. **Bankruptcy of Reconstituted Borrower.** Reconstituted Borrower, as a material inducement to Lender to enter into this Agreement, and in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, by its execution hereof covenants and agrees that in the event Reconstituted Borrower shall (i) file any petition with any bankruptcy court or be the subject of any petition under the United States Bankruptcy Code (11 U.S.C. §101 et seq., the "Code"), (ii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (iii) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator, or (iv) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, Lender shall thereupon be entitled, and Reconstituted Borrower irrevocably consents, to the entry of an order by a bankruptcy court granting to Lender relief from any automatic stay imposed by Section 362 of the Code, or otherwise, on or against the exercise of the rights and remedies otherwise available to Lender as provided in the Loan

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Documents, this Agreement or as otherwise provided by law or in equity, and Reconstituted Borrower hereby irrevocably waives its right to object to, attempt to enjoin or otherwise interfere with such relief and the exercise and enforcement by Lender of its rights and remedies following entry of such order. Without limiting the generality of the immediately preceding sentence, Reconstituted Borrower agrees that Lender will be entitled to and hereby consents to immediate relief from the automatic stay imposed by the Code to allow Lender to take any and all actions necessary, desirable or appropriate to enforce any rights Lender may have under the Loan Documents, including, but not limited to, the right to possession of the Property, collection of rents, and/or the commencement or continuation of an action to foreclose Lender's liens and security interests. Reconstituted Borrower further agrees that the filing of any petition for relief under the Code which postpones, prevents, delays, or otherwise hinders Lender's efforts to collect the amounts due under the Note or to liquidate any of the collateral therefore shall be deemed to have been filed in bad faith and, therefore, shall be subject to prompt dismissal or conversion to a case under Chapter 7 of the Code upon motion therefore by Lender. Further, Reconstituted Borrower agrees that it will not seek, apply for or cause the entry of any order enjoining, staying, or otherwise prohibiting or interfering with Lender's obtaining an order granting relief from the automatic stay and enforcement of any rights which Lender may have under the Loan Documents, including, but not limited to, Lender's right to possession of the Property, collection of rents and/or the commencement or continuation of an action to foreclose Lender's liens and security interests under the Loan Documents.

18. **No Representations of Lender.** Original Obligors, New LP, New GP and Assuming Obligors recognize and agree that Lender has made no representation or warranty, either express or implied regarding the Property and has no responsibility whatsoever with respect to the Property, the condition of the Property or the use, occupancy or status of the Property. To the extent Assuming Obligors, New LP and New GP have any claims which in any manner relate to the Property, the condition of the Property, or the use, occupancy, or status of the Property, the same shall not be asserted against Lender or its agents, employees, professional consultants, affiliated entities, successors or assigns, or asserted as a defense to any of the Loan Documents.

19. **Incorporation of Recitals.** Each of the Recitals set forth above in this Agreement are incorporated herein and made a part hereof.

20. **Property Remains as Security for Lender; No Effect on Lien Priority.** All of the Property as described and defined in the Mortgage shall remain in all respects subject to the lien, charge or encumbrance of the Mortgage, and, except as expressly set forth herein, nothing herein contained and nothing done pursuant hereto shall affect or be construed to release or affect the liability of any party or parties who may now or hereafter be liable under or on account of the Note or the Mortgage, nor shall anything herein contained or done in pursuance hereof affect or be construed to affect any other security for the Note, if any, held by Lender. Nothing in this Agreement shall in any way release, diminish or affect the lien position of the Mortgage or any liens created by, or the agreements or covenants contained in, the Loan Documents or the lien priority of any such liens. Reconstituted Borrower agrees that the Note, Mortgage and other Loan Documents shall secure all other sums that may be advanced in the future by Lender pursuant to the terms of the Loan Documents.

21. **No Waiver by Lender.** Nothing contained herein shall be deemed a waiver of any of Lender's rights or remedies under any of the Loan Documents, or under applicable law.

22. **References.** From and after the date hereof: (a) references in any of the Loan Documents to any of the other Loan Documents will be deemed to be references to such of the Loan Documents as modified by this Agreement; (b) references in the Loan Documents to Borrower or Mortgagor shall hereafter be deemed to refer to Reconstituted Borrower; (c) references in the Indemnity Agreement and the other Loan Documents to the Assuming Indemnitor, Indemnitor or Principal shall hereafter be deemed

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to refer to Assuming Indemnitor; and (d) all references to the term "Loan Documents" in the Mortgage and Assignment shall hereinafter refer to the Loan Documents referred to herein, this Agreement, and all documents executed in connection with Agreement.

23. **Relationship with Loan Documents.** To the extent that this Agreement is inconsistent with the Loan Documents, this Agreement will control and the Loan Documents will be deemed to be amended hereby. Except as amended hereby, the Loan Documents shall remain unchanged and in full force and effect. This Agreement shall not prejudice any present or future rights, remedies or powers belonging or accruing to Lender under the Loan Documents, nor impair the lien of the Mortgage.

24. **Captions.** The headings to the Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any provisions hereof or be used to construe any such provisions.

25. **Partial invalidity.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement.

26. **Entire Agreement.** This Agreement and the documents contemplated to be executed herewith constitutes the entire agreement among the parties hereto with respect to the assumption of the Loan and shall not be amended unless such amendment is in writing and executed by each of the parties. The Agreement supersedes all prior negotiation regarding the subject matter hereof. This Agreement and the Loan Documents may not be amended, revised, waived, discharged, released or terminated orally, but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

27. **Binding Effect.** This Agreement and the documents contemplated to be executed in connection herewith shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that the foregoing provisions of this Section shall not be deemed to be a consent by Lender to any further sale, conveyance, admission, assignment or transfer of the Property (or any interests therein) by Reconstituted Borrower.

28. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be an original, but all of which, taken together, will constitute one and the same Agreement.

29. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

30. **Effective Date.** This Agreement shall be effective as of the date of its execution by the parties hereto and thereupon is incorporated into the terms of the Loan Documents.

31. **Time of Essence.** Time is of the essence with respect to all provisions of this Agreement.

32. **Cumulative Remedies.** All remedies contained in this Agreement are cumulative and Lender shall also have all other remedies provided at law and in equity or in the Mortgage and other Loan

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Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Lender and may be exercised in any order and as often as occasion therefore shall arise.

33. **Construction.** Each party hereto acknowledges that it has participated in the negotiation of this Agreement and that no provision shall be construed against or interpreted to the disadvantage of any party. Assuming Obligors, New LP, New GP and Original Obligors have had sufficient time to review this Agreement, have been represented by legal counsel at all times, have entered into this Agreement voluntarily and without fraud, duress, undue influence or coercion of any kind. No representations or warranties have been made by Lender to any party except as set forth in this Agreement.

34. **WAIVER OF JURY TRIAL. ORIGINAL OBLIGORS, ASSUMING OBLIGORS, NEW L, NEW GP AND LENDER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE LOAN DOCUMENTS OR THIS.**

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first aforesaid.

INITIAL GP

444 NoMi, LLC,
a Delaware limited liability company

By: _____

Name: Allen Silverman

Title: Sole Member and Manager

INITIAL LP

HIW ASSOCIATES, LLC,
a New York limited liability company

By: _____

Name:

Title:

BORROWER:

444 PARTNERS, LP,
a Delaware limited partnership

By: 444 NoMi, LLC,
a Delaware limited liability company
Its General Partner

By: _____

Name: Allen Silverman

Title: Sole Member and Manager

ORIGINAL INDEMNITOR:

ALLEN SILVERMAN, individually

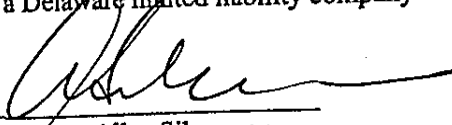
[SIGNATURES FOLLOW]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first aforesaid.

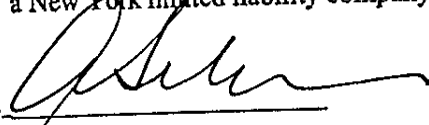
INITIAL GP

444 NoMi, LLC,
a Delaware limited liability company

By: 
Name: Allen Silverman
Title: Sole Member and Manager

INITIAL LP


HIW ASSOCIATES, LLC,
a New York limited liability company

By: 
Name:
Title:

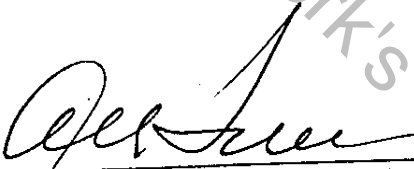
BORROWER:

444 PARTNERS, LP,
a Delaware limited partnership

By: 444 NoMi, LLC,
a Delaware limited liability company
its General Partner

By: 
Name: Allen Silverman
Title: Sole Member and Manager

ORIGINAL INDEMNITOR:


ALLEN SILVERMAN, individually

[SIGNATURES FOLLOW]

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State of New York)
County of New York) ss:

On the 26 day of July in the year 2004 before me, the undersigned, personally appeared Allen Silverman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

[SEAL]

ELAINE E. ROSS
Notary Public, State of New York
No. 01R04766626
Qualified in Bronx County
Commission Expires November 30, 2006

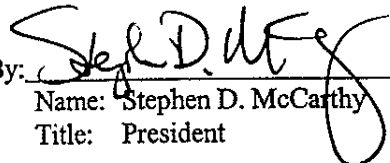
Property of Cook County Clerk's Office

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NEW GP

WESTWIND 444 NORTH MICHIGAN AVENUE
MANAGEMENT, LP,
a Delaware limited partnership

By: WestWind 444 North Michigan Avenue
Management Corporation,
a Delaware corporation,
its sole general partner

By: 
Name: Stephen D. McCarthy
Title: President

[SIGNATURES FOLLOW]

Property of Cook County Clerk's Office

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NEW GP

WESTWIND 444 NORTH MICHIGAN AVENUE
MANAGEMENT, LP,
a Delaware limited partnership

By: WestWind 444 North Michigan Avenue
Management Corporation,
a Delaware corporation,
its sole general partner

By: _____
Name: Stephen D. McCarthy
Title: President


[SIGNATURES FOLLOW]


Property of Cook County Clerk's Office

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NEW LP/
ASSUMING INDEMNITOR:

KAN AM GRUND KAPITALANLAGE-
GESELLSCHAFT, mbH,
a German limited liability company

By: 
Name: Matti Kreutzer,
Title: Managing Director

By: 
Name: Hans-Joachim Kleinert
Title: Managing Director

[SIGNATURES FOLLOW]

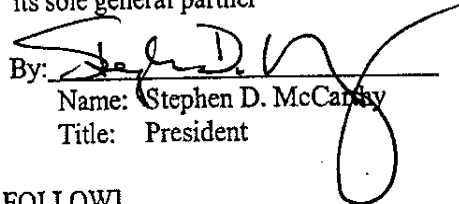
Property of Cook County Clerk's Office

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RECONSTITUTED BORROWER: KAN AM 444 NORTH MICHIGAN AVENUE,
LP, a Delaware limited partnership;

By: WestWind 444 North Michigan Avenue
Management, LP,
a Delaware limited partnership,
its sole general partner

By: WestWind 444 North Michigan Avenue
Management Corporation,
a Delaware corporation,
its sole general partner

By: 
Name: Stephen D. McCarty
Title: President

[SIGNATURES FOLLOW]

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RECONSTITUTED BORROWER: KAN AM 444 NORTH MICHIGAN AVENUE,
LP, a Delaware limited partnership;

By: WestWind 444 North Michigan Avenue
Management, LP,
a Delaware limited partnership,
its sole general partner

By: WestWind 444 North Michigan Avenue
Management Corporation,
a Delaware corporation,
its sole general partner

By: _____
Name: Stephen D. McCarthy
Title: President

[SIGNATURES FOLLOW]

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LENDER:

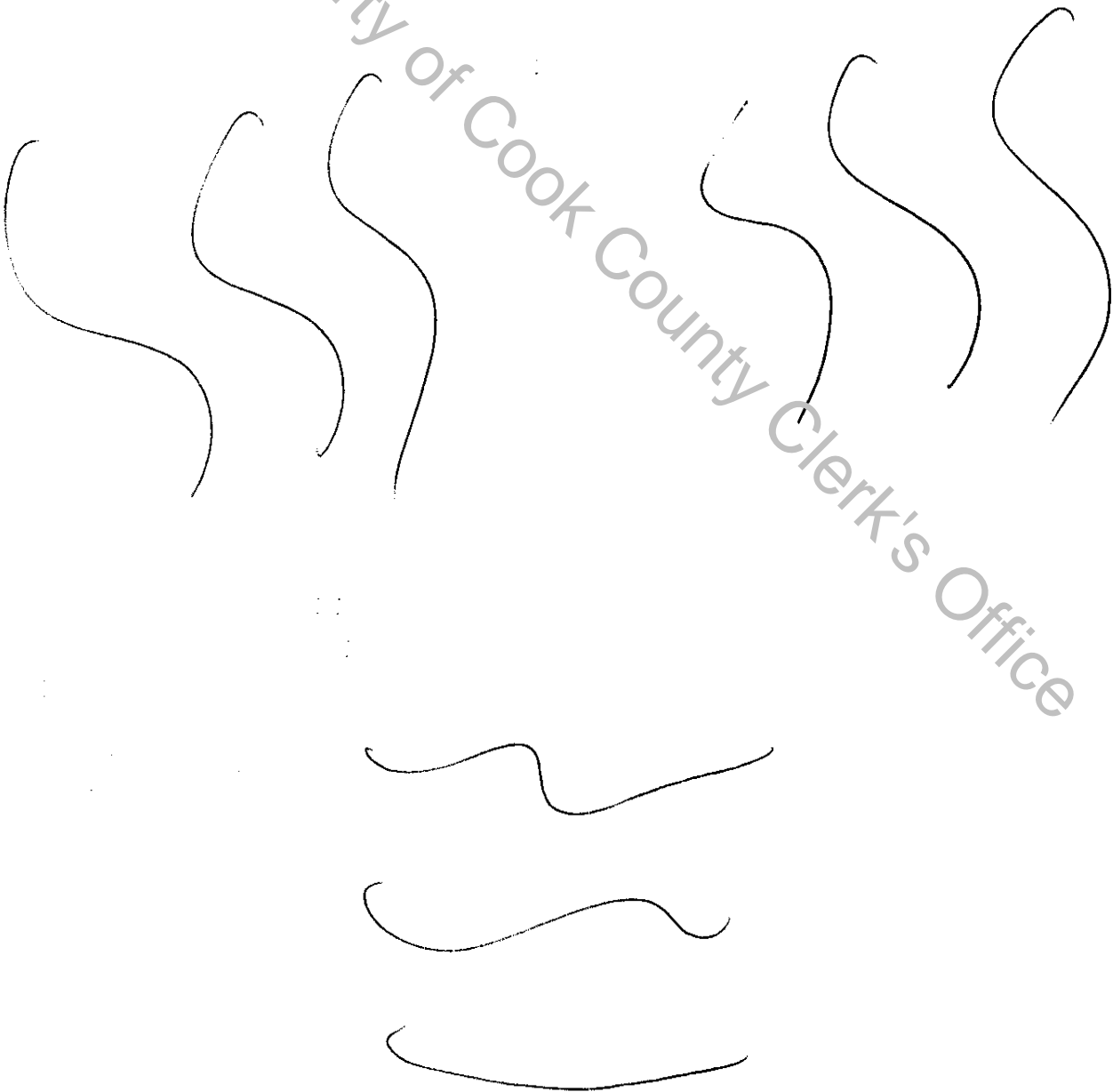
WACHOVIA BANK, NATIONAL
ASSOCIATION, a national banking association

By: _____

Name:

Title:

Property of Cook County Clerk's Office

The page contains several large, handwritten scribbles and lines. On the left side, there are three large, wavy, vertical scribbles. In the center, there are two more large, wavy, vertical scribbles. At the bottom of the page, there are three horizontal, wavy lines. These scribbles appear to be either illegible signatures or marks made on the document.

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State of _____)
) ss:
 County of _____)

On the ___ day of July in the year 2004 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

 Notary Public

[SEAL]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

State of _____)
) ss:
 County of _____)

On the ___ day of July in the year 2004 before me, the undersigned, personally appeared Allen Silverman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

 Notary Public

[SEAL]

State of _____)
) ss:
 County of _____)

On the ___ day of July in the year 2004 before me, the undersigned, personally appeared Allen Silverman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

 Notary Public

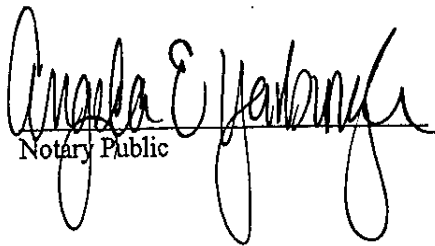
[SEAL]

Property of Cook County Clerk's Office

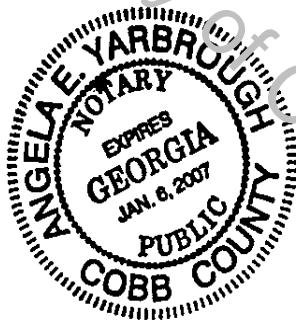
UNOFFICIAL COPY

State of GEORGIA)
County of COBB) ss:

On the 26th day of July in the year 2004 before me, the undersigned, personally appeared Stephen D. McCarthy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he executed the same in his capacity as President of WestWind 444 North Michigan Avenue Management Corporation, as sole general partner of WestWind 444 North Michigan Avenue Management, LP, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

[SEAL]



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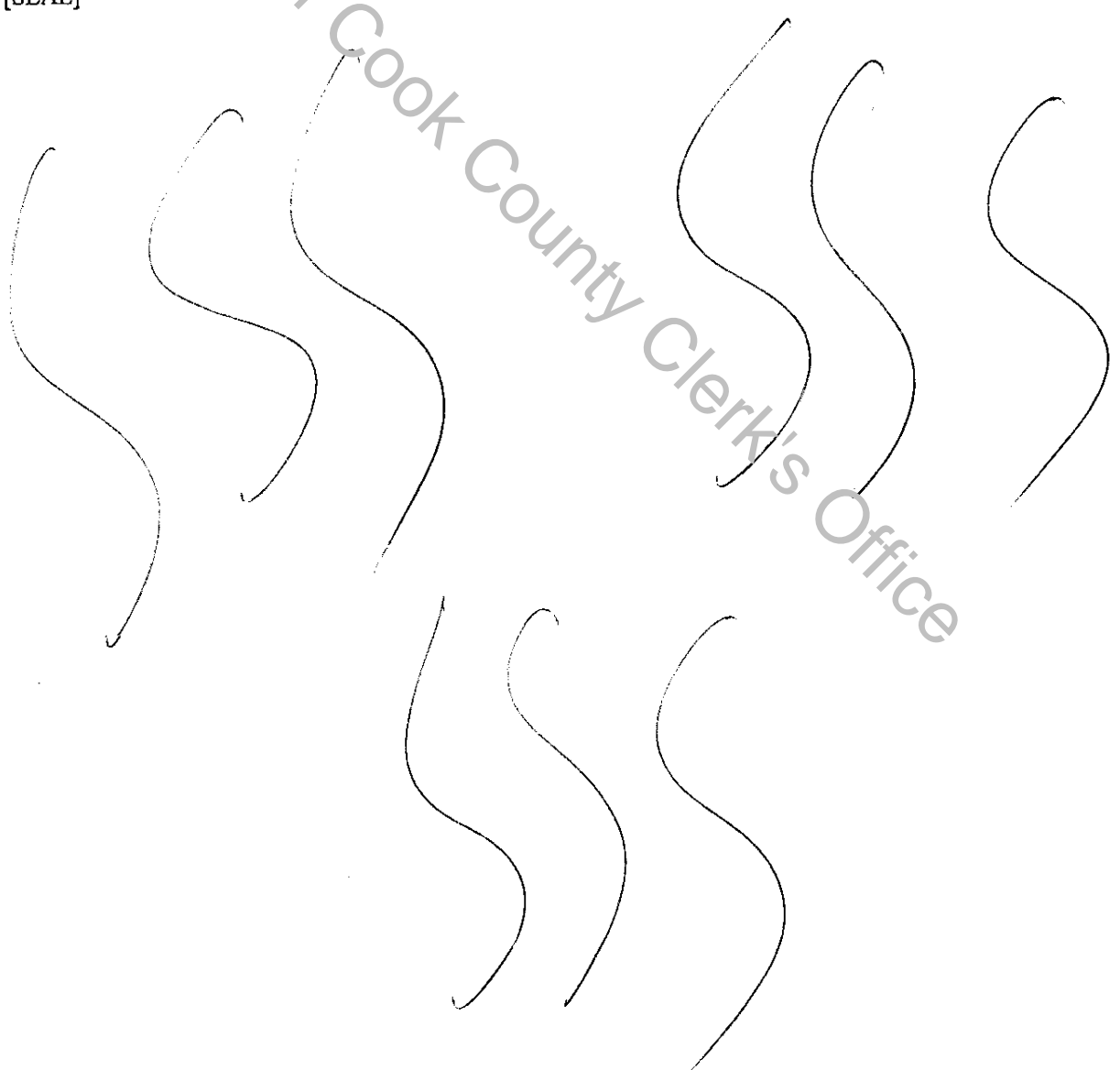
State of _____)
) ss:
County of _____)

On the ___ day of July in the year 2004 before me, the undersigned, personally appeared Stephen D. McCarthy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as President of WestWind 444 North Michigan Avenue Management Corporation, as sole general partner of WestWind 444 North Michigan Avenue Management, LP, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

[SEAL]

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UNOFFICIAL COPY

State of _____)
County of _____) ss:

On the ___ day of July in the year 2004 before me, the undersigned, personally appeared Hans-Joachim Kleinert, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he executed the same in his capacity as Managing Director of Kan Am Grund Kapitalanlagesellschaft mbH, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument in said capacity.

Notary Public

[SEAL]

State of _____)
County of _____) ss:

On the ___ day of July in the year 2004 before me, the undersigned, personally appeared Matti Kreutzer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he executed the same in his capacity as Managing Director of Kan Am Grund Kapitalanlagesellschaft mbH, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument in said capacity.

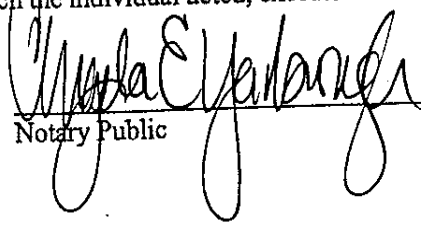
Notary Public

[SEAL]

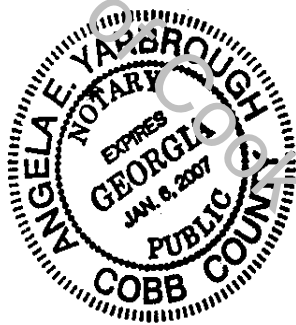
UNOFFICIAL COPY

State of GEORGIA)
) ss:
County of COBB)

On the 26th day of July in the year 2004 before me, the undersigned, personally appeared Stephen D. McCarthy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he executed the same in his capacity as President of WestWind 444 North Michigan Avenue Management Corporation, as sole general partner of WestWind 444 North Michigan Avenue Management, LP, as sole general partner of Kan Am 444 North Michigan Avenue, LP, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

[SEAL]



County Clerk's Office

UNOFFICIAL COPY

State of _____)
) ss:
 County of _____)

On the ___ day of July in the year 2004 before me, the undersigned, personally appeared Stephen D. McCarthy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he executed the same in his capacity as President of WestWind 444 North Michigan Avenue Management Corporation, as sole general partner of WestWind 444 North Michigan Avenue Management, LP, as sole general partner of Kan Am 444 North Michigan Avenue, LP, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

 Notary Public

[SEAL]

Property of Cook County Clerk's Office

The page contains several large, wavy, handwritten scribbles that appear to be illegible marks or signatures. A circular stamp, likely a notary seal, is visible on the left side of the page, but its content is not legible.

UNOFFICIAL COPY

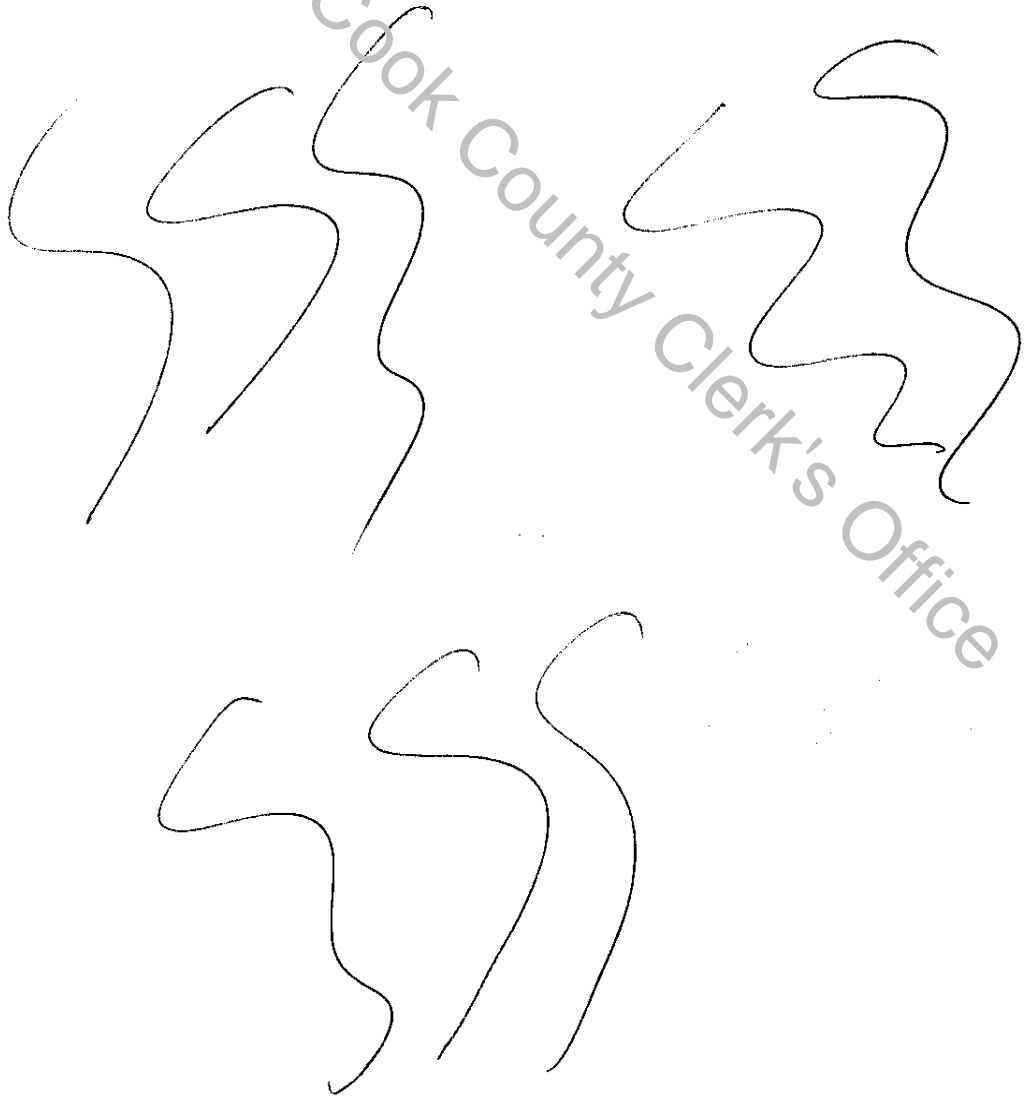
State of _____)
) ss:
County of _____)

On the ____ day of July in the year 2004 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

[SEAL]

Property of Cook County Clerk's Office

The image contains several large, handwritten signatures and scribbles in black ink, which appear to be illegible. These are positioned over the lower half of the page, partially overlapping the diagonal watermark text.

UNOFFICIAL COPY

Doc. no. 108/2004 S

I hereby certify that the signatures appearing overleaf are the original signatures, executed in my presence of

1. Mr. Matti Kreutzer, born February 1, 1948, and
2. Mr. Hans-Joachim Kleinert, born July 17, 1960,


who are both personally known to me and who are both domiciled Messeturm, 60308 Frankfurt am Main

were acknowledged before me.

After inspection of the Commercial Register Frankfurt am Main - Register No. HRB 52360 - on July 20, 2004, I hereby certify that the managing directors Matti Kreutzer and Hans-Joachim Kleinert are entitled to represent KanAm Grund Kapitalanlagegesellschaft mbH, Frankfurt am Main, acting jointly.

The notary asked if there had been any prior involvement as defined by § 3 para. 1 no. 7 of the Official Recordings Act. The persons appearing answer in the negative.

Frankfurt am Main, July 22, 2004


(Dr. Hans-Josef Schneider) Notary Public

UNOFFICIAL COPY

APOSTILLE
(Convention de la Haye du 5 octobre 1961)

1. Land: Bundesrepublik Deutschland
Diese öffentliche Urkunde

2. ist unterschrieben von Dr. Hans-Josef Schneider
amtlich bestellter Notar

3. in seiner Eigenschaft als _____
Notars

4. sie ist versehen mit dem Siegel/Stempel des(der) _____

Bestätigt

5. in Frankfurt/Main
6. am 22. Juli 2004

7. durch den Herrn Präsidenten des Landgerichts
8. unter Nr. 91 Es A 5431

9. Siegel/Stempel
10. Unterschrift

v. Labermeier



Properly Filed in Cook County Clerk's Office

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LENDER:

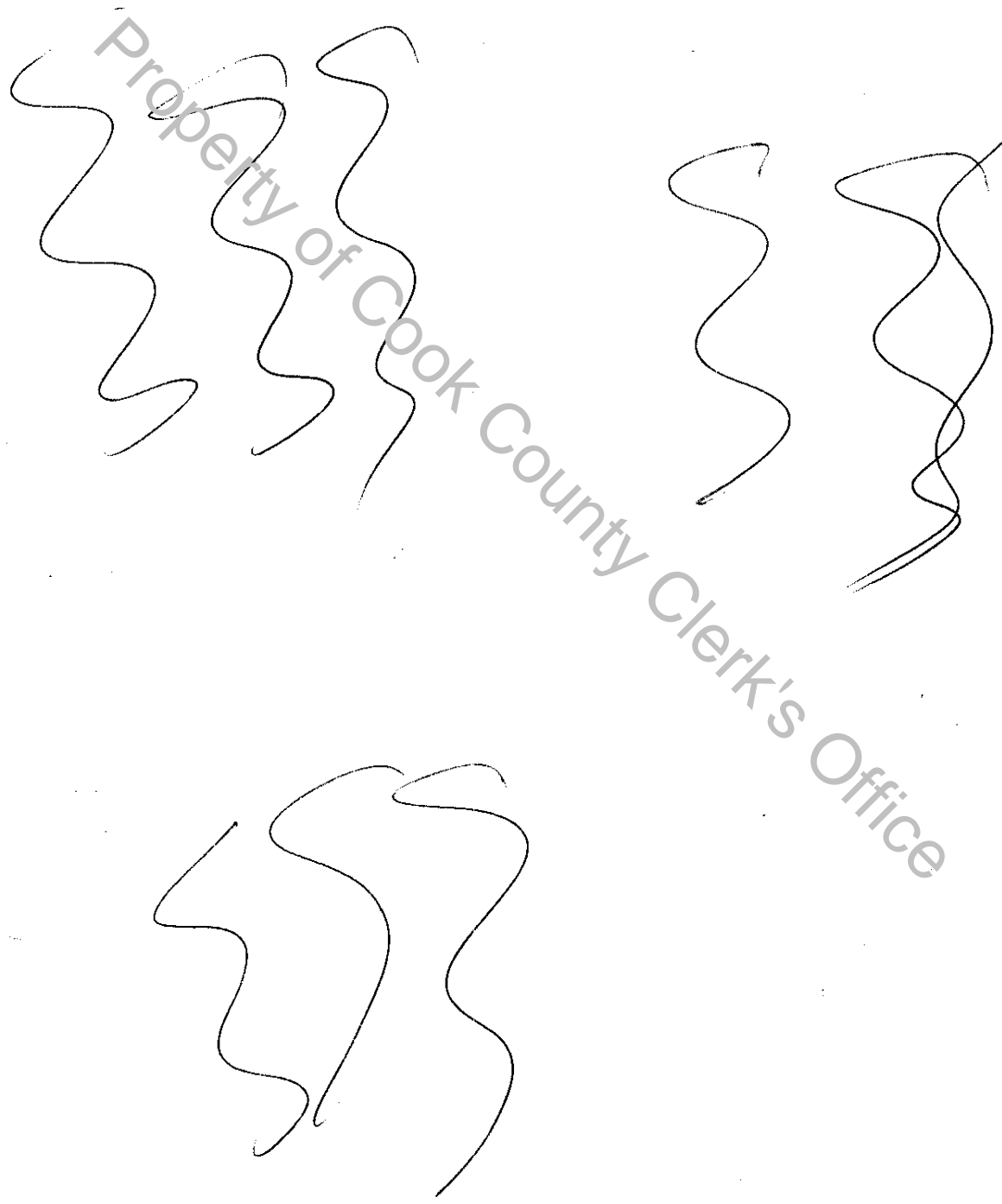
WACHOVIA BANK, NATIONAL
ASSOCIATION, a national banking association

By: 

Name: Chad W. Johnson

Title: Managing Director

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UNOFFICIAL COPY

State of New York)
County of Westchester) ss:

On the 23 day of July in the year 2004 before me, the undersigned, personally appeared Chad Johnson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

M. Zorrilla
Notary Public

[SEAL]

MADLINE ZORRILLA
Notary Public, State of New York
Registration #01Z06043997
Qualified in Westchester County
My Commission Expires June 28, 20__

Property of Cook County Clerk's Office