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Eugene "Gene" Moore Fee: \$38.00
Cook County Recorder of Deeds
Date: 09/23/2004 01:34 PM Pg: 1 of 8

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FIFTH MODIFICATION AGREEMENT

THIS FIFTH MODIFICATION AGREEMENT dated as of August 1, 2004, by and among WEST TOWN CENTER LLC, an Illinois limited liability company (the "Mortgagor"), LAURANCE H. FREED (the "Guarantor") (the Mortgagor and the Guarantor being sometimes referred to herein collectively as the "Borrower/Guarantor Parties"), and LASALLE BANK NATIONAL ASSOCIATION, a national banking association (the "Bank");

WITNESSETH:

WHEREAS, the Mortgagor/Guarantor Parties and the Bank heretofore entered into the following described documents (collectively the "Documents");

- (i) Second Amended and Restated Loan Agreement by and between the Mortgagor and the Bank (the "Loan Agreement");
- (ii) Second Amended and Restated Mortgage Note from the Mortgagor to the Bank in the principal amount of \$24,500,000 (the "Note");
- (iii) Second Amended and Restated Mortgage and Security Agreement from the Mortgagor to the Bank, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on July 10, 2003, as Document No. 0319135078;
- (iv) Amended and Restated Assignment of Rents and Leases from the Mortgagor to the Bank, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on July 10, 2003, as Document No. 0319135079;

Permanent Tax Index Numbers and Address: This Instrument Prepared by and to be Returned After Recording to:

See Exhibit A

Alvin L. Kruse
Elizabeth Pfeiler Foley
Seyfarth Shaw
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603

Box 400-CTCC

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(v) Amended and Restated Indemnity Agreement from the Mortgagor/Guarantor Parties to the Bank; and

(vi) Amended and Restated Guaranty of Payment and Performance from the Guarantor to the Bank; and

WHEREAS, the Documents encumber the real estate described in Exhibit A attached hereto and the personal property located thereon; and

WHEREAS, the parties desire to make certain modifications and amendments to the Documents, as more fully provided for herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Recitals Part of Agreement; Defined Terms. (a) The foregoing recitals are hereby incorporated into and made a part of this Agreement.

(b) All capitalized terms used and not otherwise defined in this Agreement shall have the meanings set forth in the Loan Agreement.

Section 2. Disbursement of Portion C; Principal Payments. (a) The parties acknowledge and agree that on July 12, 2004, the Bank disbursed the entire \$2,000,000 of the proceeds of Portion C to the Mortgagor, without requiring satisfaction of the conditions thereto provided in Section 1 of the Loan Agreement.

(b) Subparagraph (iii) of paragraph (c) of Section 1 of the Loan Agreement is hereby amended and restated in its entirety, to read as follows:

(iii) The Mortgagor shall pay interest on Portion C monthly in arrears on September 1, 2004, and on the first day of each month thereafter, and shall make monthly payments on the principal of Portion C in the amount of \$2,750, on September 1, 2004, and on the first day of each month thereafter.

Section 3. Interest Rate Protection - Portion C. Contemporaneously with the execution and delivery of this Agreement, the Mortgagor is entering into a rate swap transaction with the Bank to provide interest rate protection on the entire amount of Portion C for the entire term of Portion C. The parties acknowledge and agree that (i) such rate swap transaction shall be a Rate Management Transaction within the meaning of Section 1 of the Loan Agreement, and (ii) without limitation on the generality of the foregoing provisions of this Section, the provisions of paragraphs (b) and (c) of Section 2 of the Loan Agreement shall be applicable to such Rate Management Transaction.

Section 4. Attachment to Note. The Bank may, and prior to any transfer by it of the Note shall, attach a copy of this Agreement to the original Note and place an endorsement on the original Note making reference to the fact that such attachment has been made.

Section 5. Representations and Warranties. In order to induce the Bank to enter into this Agreement, the Borrower/Guarantor Parties hereby represent and warrant to the Bank as follows:

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(a) The Mortgagor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois, has all necessary power and authority to carry on its present business, and has full right, power and authority to enter into this Agreement and each of the Documents to which it is a party and to perform and consummate the transactions contemplated hereby and thereby. Westown Properties, Inc., an Illinois corporation (the "Manager"), is the sole manager of the Mortgagor

(b) The Manager is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois, has all necessary power and authority to carry on its present business, and has full right, power and authority to enter into this Agreement and each of the Documents to which the Mortgagor is a party in its capacity as Manager of the Mortgagor.

(c) The Guarantor is under no legal disability and has full right, power and authority to enter into this Agreement and each of the Documents to which he is a party and to perform and consummate the transactions contemplated hereby.

(d) This Agreement and each of the Documents has been duly authorized, executed and delivered by such of the Borrower/Guarantor Parties as are parties thereto, and this Agreement and each of the Documents constitutes a valid and legally binding obligation enforceable against such of the Borrower/Guarantor Parties as are parties thereto. The execution and delivery of this Agreement and the Documents and compliance with the provisions thereof under the circumstances contemplated therein do not and will not conflict with or constitute a breach or violation of or default under the articles of organization or operating agreement of the Mortgagor, the articles of incorporation or bylaws of the Manager, or any agreement or other instrument to which any of the Borrower/Guarantor Parties or the Manager are a party, or by which any of them is bound, or to which any of their respective properties are subject, or any existing law, administrative regulation, court order or consent decree to which any of them is subject.

(e) The Borrower/Guarantor Parties are in full compliance with all of the terms and conditions of the Documents to which they are a party, and no Default or Event of Default has occurred and is continuing with respect to any of the Documents.

(f) There is no litigation or administrative proceeding pending or threatened to restrain or enjoin the transactions contemplated by this Agreement or any of the Documents, or questioning the validity thereof, or in any way contesting the existence or powers of any of the Borrower/Guarantor Parties or the Manager, or in which an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement or any of the Documents, or would result in any material adverse change in the financial condition, properties, business or operations of either of the Borrower/Guarantor Parties.

(g) The statements contained in the recitals to this Agreement are true and correct.

Section 6. Documents to Remain in Effect; Confirmation of Obligations; References. The Documents shall remain in full force and effect as originally executed and delivered by the parties, except as expressly modified and amended herein. The Borrower/Guarantor Parties hereby (i) confirm and reaffirm all of their obligations under the Documents, as modified and amended herein; (ii) acknowledge and agree that the Bank, by entering into this Agreement, does not waive any existing or future default or event of default

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under any of the Documents, or any rights or remedies under any of the Documents, except as expressly provided herein; (iii) acknowledge and agree that the Bank has not heretofore waived any default or event of default under any of the Documents, or any rights or remedies under any of the Documents; and (iv) acknowledge that they do not have any defense, set-off or counterclaim to the payment or performance of any of their obligations under the Documents, as modified and amended herein. All references in the Documents to any one or more of the Documents, or to the "Loan Documents," shall be deemed to refer to such Document, Documents or Loan Documents, as the case may be, as modified and amended by this Agreement.

Section 7. Certifications, Representations and Warranties. In order to induce the Bank to enter into this Agreement, the Borrower/Guarantor Parties hereby certify, represent and warrant to the Bank that all certifications, representations and warranties contained in the Documents and in all certificates heretofore delivered to the Bank are true and correct as of the date hereof, and all such certifications, representations and warranties are hereby remade and made to speak as of the date of this Agreement.

Section 8. Entire Agreement. This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this Agreement other than as are herein set forth.

Section 9. Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

Section 10. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11. Amendments, Changes and Modifications. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

Section 12. Construction. (a) The words "hereof," "herein," and "hereunder," and other words of a similar import refer to this Agreement as a whole and not to the individual Sections in which such terms are used.

(b) References to Sections and other subdivisions of this Agreement are to the designated Sections and other subdivisions of this Agreement as originally executed.

(c) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

(d) Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

(e) The Mortgagor/Guarantor Parties and the Bank, and their respective legal counsel, have participated in the drafting of this Agreement, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party

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drafting the contract shall not be employed in the construction and interpretation of this Agreement.

Section 13. Execution of Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14. Governing Law. This Agreement is prepared and entered into with the intention that the law of the State of Illinois shall govern its construction and enforcement.

[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]

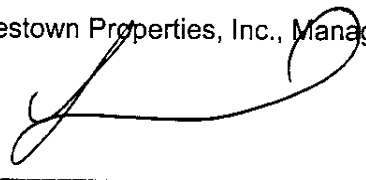
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IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

WEST TOWN CENTER LLC

By Westown Properties, Inc., Manager

By 

Laurance H. Freed, President

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Laurance H. Freed

LASALLE BANK NATIONAL ASSOCIATION

By 

Title: C.B.O.

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EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

LOTS 1 THROUGH 9, INCLUSIVE IN WEST TOWN SUBDIVISION BEING A RESUBDIVISION OF LOTS AND VACATED STREETS AND ALLEYS IN AND ADJOINING BLOCKS 1, 2 AND 3 IN BAUWANS AND HOFFMAN'S SUBDIVISION AND OF LOTS IN HOFFMAN'S RESUBDIVISION OF LOTS 1 TO 4 IN BLOCK 2 IN SAID BAUWANS AND HOFFMAN'S SUBDIVISION IN THE EAST 1/2 OF THE NORTH EAST 1/4 OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Paulina & Milwaukee
Chicago, IL

PTN: 17-06-232-033 to 038
17-06-232-040 to 043
17-06-235-068, 115, 114
17-06-501-003

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