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Upon recordation, return to:

Scott M. Lapins, Esq.
Schwartz, Cooper, Greenberger & Krauss, Chtd.
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601



0514711187

Doc#: 0514711187
Eugene "Gene" Moore Fee: \$62.00
Cook County Recorder of Deeds
Date: 05/27/2005 11:20 AM Pg: 1 of 20

Property of Cook County Clerk's Office

**LOAN ASSUMPTION
AND
MODIFICATION AGREEMENT**

Date: May 4th, 2005

Box 400-CTCC

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LOAN ASSUMPTION AND MODIFICATION AGREEMENT

THIS LOAN ASSUMPTION AND MODIFICATION AGREEMENT (this "Agreement") is made and entered into as of May 4th, 2005, by and among **1051 PERIMETER DRIVE LLC**, an Illinois limited liability company, having an address of 55 East Jackson Blvd., Suite 500, Chicago, Illinois 60604 ("Assuming Borrower"), **NORTH STAR TRUST COMPANY**, not personally but solely as Trustee under Trust Agreement dated November 15, 2004 and known as Trust No. 04-7870 C ("Original Borrower") and **LAURENCE WEINER** and **GERALD NUDO** (together "Guarantor") in favor of **FIRST UNION COMMERCIAL CORPORATION**, whose mailing address is 201 South Jefferson Street, Roanoke, Virginia 24011 ("Lender").

RECITALS

A. Lender, pursuant to the Loan Documents (as hereinafter defined) made a loan to Original Borrower in the original principal amount of up to \$13,000,000.00 (the "Loan"). The Loan is evidenced and secured by the following documents executed in favor of Lender by Original Borrower:

- (1) Loan Agreement dated February 22, 2005 by and between Lender, Original Borrower and North Star Trust Company, as Trustee under Trust Agreement dated November 15, 2004 and known as Trust No. 04-7871 ("Crossroads Trust") (the "Loan Agreement");
- (2) Promissory Note dated February 22, 2005, payable by Original Borrower to Lender in the original principal amount of \$13,000,000.00 (the "Note");
- (3) Open-End Mortgage and Security Agreement and Financing Statement of even date with the Note granted by Original Borrower to Lender, recorded with the Cook County Recorder of Deeds on February 28, 2005 as Document No. 0505902005 in Cook County, Illinois ("Recorder's Office") (the "Mortgage");
- (4) Absolute Assignment of Lessor's Interest in Leases and Rents of even date with the Note granted by Original Borrower to Lender, recorded as Document No. 0505902006, in the Recorder's Office (the "Assignment");
- (5) Unconditional Guaranty made by Guarantor to and for the benefit of Lender of even date with the Note (the "Guaranty");
- (6) Environmental Compliance and Indemnity Agreement made by Guarantor to and for the benefit of Lender of even date with the Note (the "Environmental Indemnity Agreement"); and
- (7) The foregoing documents, together with the Crossroads Junior Mortgage described below and any and all other documents executed by Original Borrower in connection with the Loan, are collectively called the "Loan Documents."

B. The Loan is also secured by a Junior Open-End Mortgage and Security Agreement and Financing Statement made by Crossroads Trust in favor of Lender as the same may be amended, restated, extended, supplemented or otherwise modified from time to time (the "Crossroads Junior Mortgage").

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C. Pursuant to that certain Trustee's Deed dated as of April 25, 2005, Original Borrower conveyed to Assuming Borrower that certain real property more particularly described on Exhibit A attached hereto (collectively, the "Property").

D. The Property is also encumbered by a Junior Open-End Mortgage and Security Agreement and Financing Statement made by Original Borrower in favor of Lender recorded February 28, 2005 as Document No. 0505902007 (the "Woodfield Junior Mortgage") to secure a loan from Lender to the Crossroads Trust (the "Crossroads Loan").

E. Original Borrower, Guarantor and Assuming Borrower have requested that Lender consent to the conveyance, assignment and transfer of the Property by Original Borrower to Assuming Borrower, subject to the Mortgage and the other Loan Documents.

F. Lender is willing to consent to the sale, conveyance, assignment and transfer of the Property by Original Borrower to Assuming Borrower, subject to the Mortgage and the other Loan Documents, and to the assumption by Assuming Borrower of the Loan, on and subject to the terms and conditions set forth in this Agreement and in the Mortgage and in the other Loan Documents.

G. Lender, Original Borrower, Assuming Borrower and Guarantor by their respective executions hereof, evidence their consent to the transfer of the Property to Assuming 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 Borrower, Release of Lender.

(a) Original Borrower and Guarantor hereby represent to Lender, as of the date hereof, that (i) contemporaneously with the execution and delivery hereof, Original Borrower has conveyed and transferred all of the Property to Assuming Borrower; (ii) contemporaneously with the execution and delivery hereof, Original Borrower has assigned and transferred to Assuming Borrower all leases, tenancies, agreements and plans and specifications affecting or in any way involving the Property ("Existing Agreements") retaining no rights therein or thereto; (iii) Original Borrower has not received a mortgage or deed of trust from Assuming Borrower encumbering the Property to secure the payment of any sums due Original Borrower or obligations to be performed by Assuming Borrower; (iv) as of the date hereof, the Note has an unpaid principal balance of \$10,000,000.00 outstanding (\$3,000,000.00 unused); (v) the Woodfield Junior Mortgage is a valid second lien on the Property for the full unpaid principal amount of the Crossroads Loan; and (vi) the Mortgage is a valid first lien on the Property for the full unpaid principal amount of the Loan and all other amounts as stated therein; (vii) there are no known defaults under the provisions of the Loan Agreement, the Note, the Mortgage, the Crossroads Junior Mortgage, the Guaranty, the Environmental Indemnity Agreement, or the other Loan Documents; (viii) 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 Agreement, the Note, the Mortgage, the Crossroads Junior Mortgage, the Guaranty, the Environmental Indemnity Agreement, or the other Loan Documents; (ix) all provisions of the Loan Agreement, the Note, the Mortgage, the Guaranty, the Environmental Indemnity Agreement, and other Loan Documents are in full force and effect, except as modified herein; (x) other than the Woodfield Junior Mortgage, there are no subordinate liens of any kind

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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 (xi) the representations and warranties made in the Loan Agreement, Mortgage, Crossroads Junior Mortgage, Note, Environmental Indemnity Agreement, other Loan Documents or in any other documents or instruments delivered in connection with the Loan 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 Borrower hereby covenants and agrees that: (i) from and after the date hereof, Lender may deal solely with Assuming Borrower and, as applicable, Guarantor, in all matters relating to the Loan, the Loan Documents and the Property; (ii) it shall not at any time hereafter take a mortgage, deed of trust or other security encumbering the Property from Assuming Borrower to secure any sums to be paid or obligations to be performed by Assuming Borrower 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 Borrower.

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

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

(a) Assuming Borrower hereby represents and warrants to Lender, as of the date hereof, that: (i) simultaneously with the execution and delivery hereof, Assuming Borrower has acquired from Original Borrower all of the Property, and has accepted Original Borrower's assignment of the Existing Agreements; (ii) Assuming Borrower has assumed the performance of Original Borrower's obligations under the Existing Agreements; (iii) Assuming Borrower has not granted to Original Borrower a mortgage, deed of trust or other lien upon the Property to secure any debt or obligations owed to Original Borrower; (iv) no default or Event of Default (as defined in the Mortgage) has occurred or is continuing; (v) all provisions of the Loan Documents are in full force and effect; and (vi) the representations and warranties made in the Loan Agreement, Mortgage, Note, other Loan Documents or in any other documents or instruments delivered in connection with the Loan are true, on and as of the date hereof.

(b) Assuming Borrower hereby covenants and agrees that it hereby: (i) assumes all the respective past, present and future obligations contained in the Loan Documents in accordance with the terms of this Agreement; (ii) Assuming Borrower shall pay when and as due all sums due under the Loan Agreement, Note and other Loan Documents (as modified hereby); and (iii) shall perform all the obligations imposed upon Original Borrower under the Loan Agreement, Note, Mortgage, Woodfield Junior Mortgage, Environmental Indemnity Agreement and all other Loan Documents, all as modified hereby. Assuming 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 Borrower has no knowledge that any of the representations and warranties made by the Original Borrower or Guarantor herein are untrue, incomplete, or incorrect.

Assuming Borrower understands and intends that Lender shall rely on the representations, warranties and covenants contained herein.

3. Representations, Warranties, and Covenants of Guarantor. Guarantor hereby represents and warrants to Lender that the conveyance of the Property from Original Borrower to Assuming Borrower, the assignment by Original Borrower of all of its rights, duties and obligations under the Loan Documents and the assumption by Assuming Borrower of all of Original Borrower's rights,

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duties and obligations under the Loan Documents and the obligations of Guarantor under the Environmental Indemnity Agreement shall not in any way affect Guarantor's duties and obligations under the Loan Documents to which it is a party (including, without limitation, the Guaranty and the Environmental Indemnity Agreement). Guarantor covenants and agrees that it shall continue to be bound by the terms and conditions of the Guaranty notwithstanding the conveyance, assignment and assumption described in this Agreement (and neither the Guaranty nor the Environmental Indemnity Agreement shall be discharged, impaired or affected by reason of such conveyance, assignment and assumption).

4. Assumption of Obligations. Assuming Borrower hereby assumes all amounts due and owing under the Note and Assuming Borrower hereby assumes all the other respective past, present and future obligations of Original Borrower of every type and nature set forth in the Loan Agreement, Note, Mortgage, the Woodfield Junior Mortgage and the other Loan Documents in accordance with their respective terms and conditions, as the same may be modified by this Agreement. Assuming Borrower hereby assumes all past, present and future obligations as "Guarantor" (as that term is defined in the Environmental Indemnity Agreement) under the Environmental Indemnity Agreement and all obligations of Debtor under that certain Security Agreement dated February 22, 2005 by Laurence Weiner, Gerald Nudo, Elliot M. Weiner, Voshel Investments LLC and Weiner Investments LLC. Assuming Borrower further agrees to abide by and be bound by all of the terms of the Loan Documents (excluding the Guaranty), 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 (excluding the Guaranty) had been made, executed, and delivered by Assuming Borrower. Assuming Borrower agrees to pay, perform, and discharge each and every obligation of payment and performance applicable to Assuming Borrower or Guarantor under, pursuant to and as set forth in the Loan Agreement, Note, the Mortgage, the Woodfield Junior Mortgage, the Environmental Indemnity Agreement and the other Loan Documents at the time, in the manner and otherwise in all respects as therein provided. Assuming Borrower hereby acknowledges, agrees and warrants that (i) there are no rights of set-off or counterclaim, nor any defenses of any kind, whether legal, equitable or otherwise, which would enable Assuming Borrower to avoid or delay timely performance of its obligations under the Loan Agreement, Note, Mortgage, the Woodfield Junior Mortgage, the Environmental Indemnity Agreement, or any of 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 Notes are expressly recognized as valid and are in all things renewed, continued and preserved in force to secure payment of the Notes, except as amended herein.

5. Consent to Conveyance and Assumption; No Release. Subject to the terms and conditions set forth in this Agreement, Lender consents to: (a) the conveyance, assignment and transfer of the Property by Original Borrower to Assuming Borrower, subject to the Mortgage and the other Loan Documents; and (b) the assumption by Assuming Borrower of the Loan and of the obligations of Original Borrower under the Loan Documents. By its execution hereof, Original Borrower ratifies and confirms that the assumption by Assuming Borrower of all of Original Borrower's obligations set forth in the Loan Agreement, the Note, the Mortgage, the Woodfield Junior Mortgage and the other Loan Documents shall not relieve Original Borrower of any liability under any of the Loan Documents. Lender's consent to the transfer of the Property to Assuming Borrower and the assumption by Assuming Borrower hereunder shall not constitute its consent to any subsequent transfers of the Property.

6. Acknowledgment of Indebtedness. The parties acknowledge and agree that, as of the date of this Agreement, the principal balance of the Note is \$10,000,000.00. Assuming Borrower acknowledges and agrees that the Loan, as evidenced and secured by the Loan Documents, is a valid and existing indebtedness payable by Assuming Borrower to Lender.

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7. **Modifications of the Loan Documents.** The Loan Documents are hereby modified as follows:

(a) The Loan Agreement, Note, Mortgage and other Loan Documents are hereby modified to incorporate the terms and provisions of this Agreement.

8. **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.** Original Borrower shall pay, or cause to be paid 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, transfer fees, inspection fees, title insurance policy or endorsement premiums or other charges of the Title Company (as hereinafter defined) and the fees and expenses of legal counsel to Lender.

(b) **Title Endorsement.** Original Borrower shall cause Chicago Title Insurance Company (the "Title Company") to issue a "date down" or similar endorsement (the "Endorsement") to Policy No. 1401 008250651 (the "Policy"), which endorsement shall: (i) reflect the current ownership of the Property; (ii) reflect the Lender as the owner of the Loan Documents; (iii) be effective as of the date of delivery of this Agreement; (iv) continue to insure the Mortgage as a first lien on the Premises; (v) show no new title exceptions unacceptable to Lender and (vi) otherwise be in form and content acceptable to Lender, in its sole discretion.

(c) **Loan Documents.** Assuming Borrower shall execute and deliver to Lender (or Lender may file): UCC financing statements, as may be required by Lender, with Assuming Borrower as debtor and Lender as secured party, covering the property which is covered by the Financing Statement, for filing as a personal property filing with the Recorder's Office and the Office of the Secretary of State of the State of Illinois. Assuming Borrower, Original Borrower and Guarantor shall execute such other agreements, instruments, documents and other writings as may be requested by Lender to maintain the perfection of Lender's security interest in the Property and to consummate the transactions contemplated by or in the Loan Documents and this Agreement.

(d) **Recordation.** Upon execution hereof by Lender, Original Borrower and Assuming Borrower shall cause this Agreement to be recorded in the Recorder's Office, and Assuming Borrower shall cause a certified file stamped copy of the recorded original hereof and a certified file stamped copy of the recorded Deed conveying the Property to Assuming Borrower to be delivered to Lender within fifteen (15) days from the execution date hereof.

(e) **Insurance.** Assuming Borrower shall deliver to Lender a copy of Assuming Borrower's insurance policies or insurance certificate evidencing that the Property is insured in accordance with the requirements of the Loan Documents and that Lender is named as an additional insured under such insurance policies, and otherwise satisfactory to Lender in its sole discretion.

(f) **Organizational Documents.** Assuming Borrower shall deliver to Lender true and correct copies of its operating agreement, the articles of organization filed with the Secretary of State of the State of Illinois and a Certificate of Existence issued by the Secretary of State of the State of Illinois. Original Borrower shall deliver to Lender true and correct copies of corporate resolutions of Original Borrower authorizing the transactions contemplated by this Agreement and evidencing Original Borrower's agreement to become the general partner of Assuming Borrower.

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(g) Transfer Documents. All documents executed in conjunction with the transfer of the Property from Original Borrower to Assuming Borrower shall be acceptable to Lender in its complete discretion.

(h) Other Conditions. Satisfaction of all requirements under the Loan Documents, and such other conditions as Lender or its counsel, in their sole discretion, shall impose.

(i) Default.

(1) Breach. Any breach by Assuming Borrower of any of the representations and warranties shall constitute a default under the Mortgage and each other Loan Document.

(2) Failure to Comply. Assuming Borrower's failure to fulfill any one of the conditions set forth in this Agreement shall constitute a default under this Agreement and the Loan Documents.

9. No Further Consents. Assuming Borrower, Original Borrower and Guarantor acknowledge and agree that Lender's consent herein contained is expressly limited to the conveyance, assignment and transfer herein described, that such consent shall not waive or render unnecessary Lender's consent or approval of any subsequent conveyance, assignment or transfer of the Property, and that the "Due on Sale or Further Encumbrance or Transfer of an Interest in Mortgagor" section of the Mortgage shall continue in full force and effect.

10. Additional Representations, Warranties and Covenants of Assuming Borrower. As a condition of this Agreement, Assuming Borrower represents and warrants to Lender as follows:

(a) Assuming Borrower is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Illinois. Assuming 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) Original Borrower is a land trust duly organized and validly existing and in good standing under the laws of the State of Illinois.

(c) This Agreement and the Loan Documents constitute legal, valid and binding obligations of Assuming Borrower. Neither the entry into nor the performance 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 Borrower or any property of Assuming Borrower is bound or any statute, rule or regulation applicable to Assuming Borrower.

(d) Neither the execution of this Agreement nor the assumption and performance of the obligations hereunder 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 the Assuming Borrower or any property of Assuming Borrower is bound or any statute, rule or regulation applicable to the Assuming Borrower.

(e) 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 Borrower.

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(f) 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, civil commotion, condemnation or other action or event which has had any material adverse effect, on the business or condition (financial or otherwise) of Assuming Borrower or any of its properties or assets, whether insured against or not, since Assuming Borrower submitted to Lender its request to assume the Loan.

(g) The financial statements and other data and information supplied by Assuming Borrower in connection with Assuming Borrower's request to assume the Loan or otherwise supplied in contemplation of the assumption of the Loan by Assuming Borrower 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 Borrower 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 Borrower.

(h) Without limiting the generality of the assumption of the Loan Documents by Assuming Borrower, Assuming Borrower hereby specifically remakes and reaffirms the representations, warranties and covenants set forth in the Loan Agreement, Mortgage and the Environmental Indemnity Agreement.

(i) No representation or warranty of Assuming Borrower 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.

Any breach of Assuming Borrower of any of the representations and warranties shall constitute an Event of Default under the Deed of Trust and each other Loan Document.

11. Additional Representations, Warranties and Covenants of Original Borrower and Guarantor. As a condition of this Agreement, Original Borrower and Guarantor represent and warrant to Lender as follows:

(a) Original Borrower is a land trust duly organized and validly existing and in good standing under the laws of the State of Illinois. Original 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) Guarantor has full power and authority to enter into and carry out the terms of this Agreement.

(c) This Agreement constitute legal, valid and binding obligations of Original Borrower and Guarantor, enforceable in accordance with its terms. Neither the entry into nor the performance of and compliance with this Agreement 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 Borrower, Guarantor or any property of Original Borrower or Guarantor is bound or any statute, rule or regulation applicable to Original Borrower or Guarantor, respectively.

(d) Original Borrower has not received any written notices from any governmental entity claiming that Original Borrower 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

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(e) Original Borrower is the current owner of the Property. There are no pending or threatened suits, judgments, arbitration proceeding, administrative claims, executions or other legal or equitable actions or proceedings against Original Borrower, Guarantor 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 thereto, not disclosed in this Agreement, including, without limitation to any governmental agency.

(f) No representation or warranty of Original Borrower or Guarantor 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.

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

13. **Property Remains as Security for Lender.** 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 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.

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

15. **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 Agreement, Note, Mortgage and the Loan Documents to Borrower or Mortgagor shall hereafter be deemed to refer to Assuming Borrower; and (c) all references to the term "Loan Documents" in the Loan Agreement, Mortgage and Assignment shall hereinafter refer to the Loan Documents referred to herein, this Agreement, and all documents executed in connection with Agreement.

16. **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.

17. **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.

18. **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.

19. **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

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Loan and shall not be amended unless such amendment is in writing and executed by each of the parties. The Agreement supersedes all prior negotiations 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.

20. **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, assignment or transfer of the Property by Assuming Borrower.

21. **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.

22. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State where the Property is located.

23. **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.

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

25. **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 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 therefor shall arise.

26. **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 Borrower, Original Borrower and Guarantor 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.

27. **Trustee Exculpation.** This Agreement is executed by North Star Trust Company, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing contained herein or in the Note shall be construed as creating any liability on Trustee personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein contained, all such liability; if any being expressly waived by Bank and by every person now or hereafter claiming any right or security hereunder, and that so far as Trustee personally is concerned, the legal holder or holders of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein provided, or by action to enforce the personal liability of any guarantors of the indebtedness hereby secured, or by proceeding against any other collateral security therefor.

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28. WAIVER OF JURY TRIAL. ORIGINAL BORROWER, ASSUMING BORROWER, GUARANTOR 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 AGREEMENT, THE A&D NOTE, THE REVOLVING NOTE, THE DEED OF TRUST, THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

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

ASSUMING BORROWER:

1051 PERIMETER DRIVE LLC, an Illinois limited liability company

By: *Gerald Nudo* MANAGER
Its: *Gerald Nudo* MANAGER
BY

ORIGINAL BORROWER:

NORTH STAR TRUST COMPANY, not individually but solely as Trustee under Trust Agreement dated November 15, 2004 and known as Trust Number 04-7870

By: *Jacklin Icha*
Its: Jacklin Icha Vice-President
Attest By: *Silvia Medina*
Name: Silvia Medina Trust Officer

GUARANTOR:

Laurence Weiner
LAURENCE WEINER

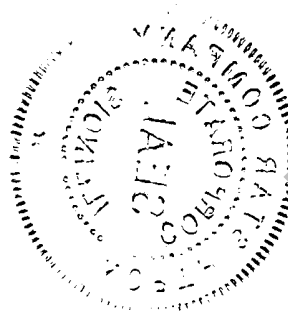
Gerald Nudo
GERALD NUDO

LENDER:

FIRST UNION COMMERCIAL CORPORATION

By: *Michael J. Sedivy*
Name: Michael J. Sedivy
Title: Senior Vice President

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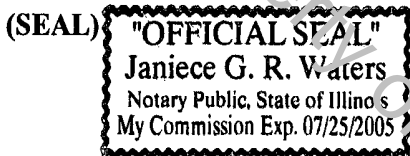
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STATE OF IL)
)
COUNTY OF COOK) ss

I, JANIECE G.R. WATERS a Notary Public in and for said County, in the State aforesaid, do hereby certify that GERALD LEE NUBOT managers of **1051 PERIMETER DRIVE LLC**, an Illinois limited liability company, who ~~is~~ personally known to me to be the same persons whose names ~~is~~ ARE subscribed to the foregoing instrument as such managers appeared before me this day in person and acknowledged that ~~they~~ signed and delivered the said instrument as ~~their~~ THEIR free and voluntary act, in ~~their~~ THEIR capacity as the managers of **1051 PERIMETER DRIVE LLC**, an Illinois limited liability company, for the uses and purposes therein set forth.

* LAURENCE H. WERNER

GIVEN under my hand and notarial seal, this 4 day of ~~April~~ May, 2005.



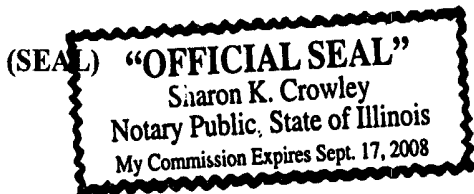
Janiece G. R. Waters
NOTARY PUBLIC

My Commission Expires: _____

STATE OF Illinois)
)
COUNTY OF Cook) ss

I certify that before me appeared this day, Justin Isha (Name), a person known to me, who after being sworn stated individually that he is a Vice-President (Title) of **NORTH STAR TRUST COMPANY** and is duly authorized to act on behalf of said Company acting, that said instrument was signed by him, and being informed of the contents thereof, acknowledged execution of the forgoing instrument on behalf of said Company.

GIVEN under my hand and notarial seal, this 4th day of ~~April~~ May, 2005.



Sharon K. Crowley
NOTARY PUBLIC

My Commission Expires: _____

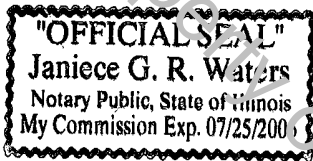
UNOFFICIAL COPY

STATE OF IL)
)
COUNTY OF Cook) ss

I, JANIECE G. R. WATERS a Notary Public in and for said County, in the State aforesaid, do hereby certify that **LAURENCE WEINER**, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 5 day of ^{May} April, 2005.

(SEAL)



Janiece G. R. Waters
NOTARY PUBLIC

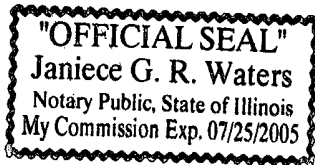
My Commission Expires: _____

STATE OF IL)
)
COUNTY OF Cook) ss

I, JANIECE G. R. WATERS a Notary Public in and for said County, in the State aforesaid, do hereby certify that **GERALD NUDO**, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 4 day of ^{May} April, 2005.

(SEAL)



Janiece G. R. Waters
NOTARY PUBLIC

My Commission Expires: _____

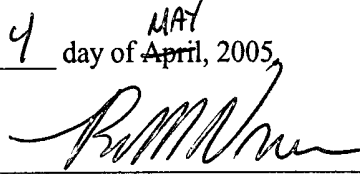
UNOFFICIAL COPY

STATE OF IL)
)
COUNTY OF COOK) ss

I certify that before me appeared this day, Michael J. Sedivy (Name), a person known to me, who after being sworn stated individually that he is a SVP (Title) of **FIRST UNION COMMERCIAL CORPORATION** and is duly authorized to act on behalf of said Corporation acting, that said instrument was signed by him, and being informed of the contents thereof, acknowledged execution of the foregoing instrument on behalf of said Corporation.

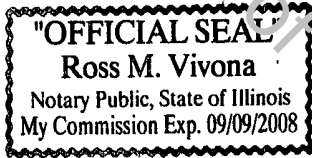
GIVEN under my hand and notarial seal, this 4 day of ~~April~~ ^{MAY}, 2005.

(SEAL)



NOTARY PUBLIC

My Commission Expires: 9/9/2008



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EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

LOT 6A IN THE RESUBDIVISION OF PARTS OF LOTS 2, 5, 6 AND 7 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTH WEST 1/4 AND THE NORTH EAST 1/4 AND THE SOUTH EAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT FILED MARCH 23, 1972 AS DOCUMENTS LR2613782 AND 21844681, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DEED FROM CHICAGO TITLE AND TRUST COMPANY, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 9, 1964 KNOWN AS TRUST NUMBER 46746 TO JEROME N. ARENDT DATED MARCH 13, 1972 AND FILED APRIL 3, 1972 AS DOCUMENT LR2615495 FOR INGRESS AND EGRESS FOR VEHICULAR AND PEDESTRIAN TRAFFIC OVER AND ACROSS THE PERIMETER ROAD FORMING THE BOUNDARY OF THE PROPERTY COMMONLY KNOWN AS "WOODFIELD MALL".

PARCEL 3:

PERPETUAL NON EXCLUSIVE EASEMENT (SUBJECT TO ALL RESTRICTIONS, COVENANTS AND DOCUMENTS OF RECORD) FOR PEDESTRIAN AND VEHICULAR TRAFFIC IN THOSE STRIPS OF LAND WHICH ARE DESIGNED AS "ACCESS ROADS" AND "RING ROAD" ON EXHIBIT B OF THE OPERATING AGREEMENT, FOR THE PURPOSE OF PROVIDING INGRESS AND EGRESS FROM PARCEL 1 AND THE PUBLIC ROADWAY WHICH INTERSECTS OR ABUTS WITH ANY SUCH ACCESS ROAD, AS CREATED BY THE AMENDED AND RESTATED IN THE CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT RECORDED DECEMBER 20, 1993 AS DOCUMENT 03043701.

PARCEL 4:

PERPETUAL NON EXCLUSIVE EASEMENT (SUBJECT TO ALL RESTRICTIONS, COVENANTS AND DOCUMENTS OF RECORD) A FOR COMMON UTILITY FACILITIES FOR THE INSTALLATION, USE, OPERATION, MAINTANENCE, REPAIR, ENLARGEMENT, REPLACEMENT, RELOCATION AND REMOVAL OF COMMON UTILITY FACILITES SERVING PARCEL 1 AS CREATED BY THE AMENDED AND RESTATED IN THE CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT

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AGREEMENT RECORDED DECEMBER 20, 1993 AS DOCUMENT 03043701, OVER PORTIONS OF THE FOLLOWING LAND

LOT 1 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO:

LOT 2B, LOT 2C, AND LOT 2D IN THE PLAT OF RESUBDIVISION OF PART OF LOT 2 IN WOODFIELD AND LOT 2A IN THE RESUBDIVISION OF PARTS OF LOTS 2, 5, 6 AND 7 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO:

LOT 3 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,

(EXCEPT THAT PART OF LOT 3 BOUNDED AND DESCRIBED AS FOLLOWS):

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 3; THENCE SOUTHEASTERLY ALONG THE EAST LINE OF SAID LOT 3, A DISTANCE OF 7.119 FEET TO A POINT; THENCE WESTERLY ALONG A STRAIGHT LINE HAVING A BEARING OF SOUTH 88 DEGREES, 17 MINUTES 05 SECONDS WEST, A DISTANCE OF 141.25 FEET TO AN ANGLE POINT, SAID POINT BEING 4 FEET SOUTH OF, AS MEASURED PERPENDICULAR TO THE NORTH LINE OF LOT 3; THENCE WESTERLY ALONG A STRAIGHT LINE TO A POINT IN THE NORTH LINE BEING 206.21 FEET WESTERLY OF THE POINT OF BEGINNING AS MEASURED ALONG THE NORTH LINE OF LOT 3; THENCE 206.21 FEET EASTERLY ALONG SAID NORTH LINE TO THE POINT OF BEGINNING;

AND EXCEPT THAT PORTION OF LOT 3 TAKEN IN CASE NUMBER 90 L 50573, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 3; THENCE SOUTH 00 DEGREES 30 MINUTES 20 SECONDS WEST, BEARING BASED ON ILLINOIS STATE PLANE COORDINATES EAST ZONE, ALONG THE WEST LINE OF SAID LOT 3 A DISTANCE OF 11.81 FEET; THENCE NORTH 87 DEGREES 48 MINUTES 11 SECONDS EAST 30.70 FEET; THENCE NORTH 87 DEGREES 56 MINUTES 41 SECONDS EAST 888.43 FEET; THENCE NORTH 88 DEGREES 27 MINUTES 36 SECONDS EAST 71.38 FEET TO THE EAST LINE OF SAID LOT 3; THENCE NORTH 47 DEGREES 06 MINUTES 19 SECONDS

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WEST ALONG THE EAST LINE 11.58 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF GOLF ROAD PER CONVEYANCE TO THE STATE OF ILLINOIS RECORDED AS DOCUMENT 21663903; THENCE SOUTH 88 DEGREES 18 MINUTES 15 SECONDS WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE 141.25 FEET; THENCE NORTH 88 DEGREES 50 MINUTES 05 SECONDS WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE 70.11 FEET TO THE NORTH LINE OF SAID LOT 3, BEING THE WESTERLY TERMINUS OF SAID CONVEYANCE AFORESAID; THENCE SOUTH 87 DEGREES 53 MINUTES 41 SECONDS WEST ALONG SAID NORTH LINE 770.53 FEET TO THE POINT OF BEGINNING.

ALSO:

LOT 4 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT PART LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE BEING AT A POINT IN THE EAST LINE OF LOT 4 POINT BEING 15.437 FEET SOUTHERLY OF THE NORTHEAST CORNER; THENCE WESTERLY ALONG A STRAIGHT LINE HAVING A BEARING OF SOUTH 89 DEGREES 12 MINUTES 14 SECONDS WEST, A DISTANCE OF 61.67 FEET TO A POINT; THENCE ALONG A STRAIGHT LINE HAVING A BEARING OF SOUTH 88 DEGREES 21 MINUTES 27 SECONDS WEST, A DISTANCE OF 62.58 FEET TO A POINT ON THE WEST LINE OF LOT 4, SAID POINT BEING 14.14 FEET SOUTHERLY TO THE NORTHWESTERLY CORNER OF LOT 4.

ALSO:

LOT 5A IN THE RESUBDIVISION OF PARTS OF LOTS 2, 5, 6 AND 7 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO:

LOTS 7B, 7C AND 7D IN PLAT OF RESUBDIVISION OF LOTS 2, 5, 6 AND 7 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 AND THE NORTHEAST 1/4 AND THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO:

LOT 8 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO:

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LOT 10 IN WOODFIELD, A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO:

LOT 11 IN WOODFIELD, A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THAT PART BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 11; THENCE NORTH 0 DEGREES 29 MINUTES 34 SECONDS EAST, ALONG THE WEST LINE OF LOT 11, A DISTANCE OF 128.83 FEET TO THE POINT OF BEGINNING; THENCE NORTH 0 DEGREES 29 MINUTES 34 SECONDS EAST ALONG THE WEST LINE OF LOT 11, A DISTANCE OF 251.20 FEET TO THE NORTHWESTERLY CORNER OF LOT 11; THENCE SOUTH 43 DEGREES 40 MINUTES 00 SECONDS EAST ALONG THE EASTERLY LINE OF LOT 11, A DISTANCE OF 226.53 FEET; THENCE SOUTH 46 DEGREES 20 MINUTES 00 SECONDS WEST PERPENDICULARLY TO THE LAST DESCRIBED LINE, A DISTANCE OF 125.40 FEET; THENCE SOUTH 89 DEGREES 22 MINUTES 48 SECONDS WEST, A DISTANCE OF 67.86 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Commonly known as Woodfield Executive Plaza, 1051 Perimeter Drive, Schaumburg, Illinois

PIN: 07-13-200-022-0000