

UNOFFICIAL COPY

Loan No. 800667



Doc#: 0624133152 Fee: \$36.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/29/2006 01:22 PM Pg: 1 of 7

Instrument Prepared, with
advice of Illinois counsel, by
and after recording, return to:
C. Bradford Lowry
Haynes and Boone, LLP
901 Main St., Suite 3100
Dallas, Texas 75202-3789

The above space for Recorder's use only

SECOND MODIFICATION
OF
MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING
[Matteson, Cook County, Illinois]

This Second Modification of Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (this "Second Modification") is executed on the date of acknowledgement to be effective as of August 18, 2006 between REALTY AMERICA GROUP (LINCOLN MALL), LP, a Texas limited partnership ("Mortgagor") and TEXANS COMMERCIAL CAPITAL, LLC, a Texas limited liability company ("Mortgagee").

BACKGROUND:

WHEREAS, Mortgagor and Mortgagee entered into that certain Loan Agreement dated as of December 17, 2004, pursuant to which Mortgagee agreed to loan to Mortgagor up to the principal sum of \$12,000,000.00 (the "Original Loan Agreement"), as further evidenced by one certain Note of even date therewith, in the original principal amount of \$12,000,000.00, executed by Mortgagor and payable to the order of Mortgagee (the "Original Note"); and

WHEREAS, the obligations of Mortgagor under the Original Loan Agreement and the Original Note were secured by, among other things, that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date therewith, executed by Mortgagor to Mortgagee, as recorded as Document No. 0436202026, Official Records of Cook County, Illinois, as amended by First Amendment to Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing, executed by Mortgagor and Mortgagee, recorded as Document No. 0523539069, Official Records of Cook County, Illinois (the "Original Mortgage"), covering the "Mortgaged Property" as described therein (the "Mortgaged Property") (the Original Loan Agreement, the Original Note, the Original Mortgage and all other instruments and documents executed in connection therewith being hereinafter referred to as the "Original Loan Documents"); and

WHEREAS, Mortgagor and Mortgagee subsequently amended and modified the Original Loan Documents by entering into, among other instruments and agreements, that certain Amended, Restated and Increased Loan Agreement, dated as of March 10, 2006, pursuant to which Mortgagee agreed to loan to Mortgagor up to the principal sum of \$26,300,000.00 (the "Amended Loan Agreement"); and

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WHEREAS, in connection with the Amended Loan Agreement, Mortgagor executed and delivered to Mortgagee, among other instruments and agreements, (i) that certain Amended, Restated and Increased Promissory Note, dated as of March 10, 2006, in the original principal amount of \$26,300,000.00 (the "Amended Note"), and (ii) that certain Modification and Increase of Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of March 10, 2006, recorded as Document No. 0608031034, Official Records of Cook County, Illinois (the "Modification of Mortgage"); and

WHEREAS, in connection with the Amended Loan Agreement, the Amended Note and the Modification of Mortgage, various other Original Loan Documents were amended, modified and/or restated (collectively, the "Amended Loan Documents");

WHEREAS, the Original Mortgage, as modified and amended by the Modification of Mortgage, is hereinafter referred to as the "Mortgage", and the term "Loan Documents" as defined in the Mortgage and as defined in the other Amended Loan Documents shall mean the Amended Loan Agreement, the Amended Note, the Mortgage (as amended by the Modification of Mortgage), and the other Amended Loan Documents, all as further amended by this Second Modification; other capitalized terms used herein and not defined herein shall have the meaning given in the Loan Documents; and

WHEREAS, Mortgagor and Mortgagee have agreed to further amend and modify the Loan Documents as provided in this Second Modification.

AGREEMENT:

NOW, THEREFORE, know all persons by these presents that in consideration of the premises hereof and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, Mortgagor and Mortgagee agree as follows:

1. The real property described on Exhibit A attached hereto (the "Additional Land") is hereby added to and shall become a part of the "Land" described in the Mortgage for all purposes (and thus shall become part of the definition of "Mortgaged Property" as described in the Mortgage and other Loan Documents for all purposes), Mortgagor hereby granting, conveying, mortgaging and warranting to Mortgagee, with right of entry and possession, all estate, right, title and interest which Mortgagor now has or may acquire in and to said Additional Land, subject only to the exceptions set forth on Exhibit B attached hereto (the "Permitted Exceptions"). Accordingly, the real property comprising the "Land" as described on Exhibit A to the Original Mortgage is hereby amended to include the Additional Land. All other Loan Documents are hereby amended to include the Additional Land in any definition or description of "Land" or "Mortgaged Property" or other similar terms, as appropriate.

2. Mortgagor represents and warrants to Mortgagee that (i) Mortgagor owns good and marketable fee simple title to the Additional Land, subject only to the Permitted Exceptions, (ii) Mortgagor has full power and authority to grant and convey the Additional Land to Mortgagee under the Mortgage, without the need for any consent or approval from any other party, (iii) the Mortgage, as modified hereby, is the valid and subsisting agreement of Mortgagor and is enforceable in accordance with its terms against Mortgagor, and (iv) as of the date hereof, there are no defenses, counterclaims or offsets to the payment and performance of Mortgagor's obligations under the Loan Agreement, the Amended Note, or any of the Loan Documents. Mortgagor hereby waives and relinquishes any and all claims against Mortgagee arising on or prior to the date hereof under or in connection with the Loan Documents, whether known or unknown, absolute or contingent.

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3. Mortgagor ratifies and confirms the liens, rights and interests created under the Mortgage with respect to the Mortgaged Property, as modified and increased hereby and acknowledges and agrees that the priority of the lien of the Mortgage is not affected hereby, it being the intention of Mortgagor that the lien of the Mortgage shall be unimpaired and that the priority of the lien of the Mortgage securing the Secured Indebtedness shall have the original priority of the Original Mortgage.

4. This Second Modification (a) shall bind and benefit Mortgagor and Mortgagee and their respective successors and assigns (provided that Mortgagor may not assign any of its rights hereunder or under any of the Loan Documents without the prior written consent of Mortgagee), (b) may be modified or amended only by a writing signed by Mortgagor and Mortgagee, (c) may be executed in more than one counterpart, each of which, when executed and delivered, shall constitute an original agreement enforceable against all who executed it without the necessity of producing or accounting for any other counterpart, and all separate counterparts shall constitute one and the same agreement, and (d) embodies the entire agreement and understanding between the parties with respect to the subject matter hereof. Mortgagor acknowledges and agrees that there are no oral agreements between the parties. If any provision of this Agreement should prove to be unenforceable, the legality and enforceability of the remaining provisions of this agreement shall not be affected thereby.

5. This is a construction mortgage, as that term is defined in Section 9-313(1) of the Uniform Commercial Code as adopted in Illinois.

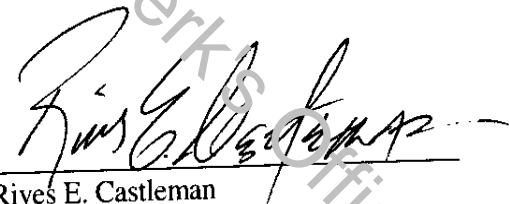
EXECUTED to be effective as of the date first set forth above.

MORTGAGOR:

REALTY AMERICA GROUP (LINCOLN MALL), LP,
a Texas limited partnership

By: **RAG-LINCOLN GENPAR, LLC,**
a Texas limited liability company,
its general partner

By:


Rives E. Castleman
Sole Member

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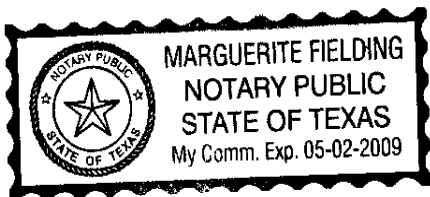
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STATE OF TEXAS §
 §
COUNTY OF DALLAS §

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, do hereby certify that Rives E. Castleman, sole member of RAG-LINCOLN GENPAR, LLC, a Texas limited liability company, the general partner of REALTY AMERICA GROUP (LINCOLN MALL), L.P., a Texas limited partnership, 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 such persons signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 17th day of August, 2006

[SEAL]



Marguerite Fielding

Notary Public

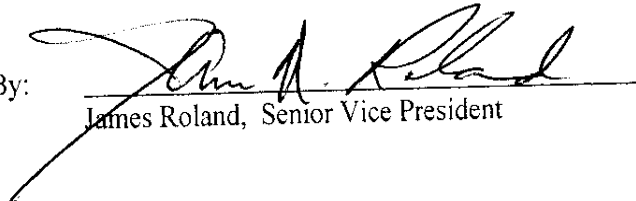
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MORTGAGEE:

TEXANS COMMERCIAL CAPITAL, LLC,
a Texas limited liability company


By: 
James Roland, Senior Vice President

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, do hereby certify that James Roland, Senior Vice President of TEXANS COMMERCIAL CAPITAL, LLC, 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 such person signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 17 day of August, 2006

[SEAL]


Notary Public

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EXHIBIT A

Legal Description of Additional Land

PARCEL 18

THE NORTH 260 FEET OF THE SOUTH 510 FEET OF THE WEST 522.72 FEET OF THAT PART OF THE SOUTHWEST 1/4 OF SECTION 22 LYING NORTH OF THE RAILROAD RIGHT OF WAY OF MICHIGAN CENTRAL RAILROAD, IN TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THAT PART TAKEN OR USED FOR CICERO AVENUE), IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 31-22-300-007-0000

Property Address: 21403 Cicero Avenue, Matteson, Illinois

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EXHIBIT B

Permitted Exceptions

1. EASEMENT IN FAVOR OF THE VILLAGE OF MATTESON, AND ITS/THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, TO INSTALL, OPERATE AND MAINTAIN A 16 INCH WATER MAIN WITH APPURTENANCES THERETO, FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY, TOGETHER WITH THE RIGHT OF ACCESS TO SAID EQUIPMENT, AND THE PROVISIONS RELATING THERETO CONTAINED IN THE GRANT RECORDED/FILED AS DOCUMENT NO. 21036087, AFFECTING THE WEST 70 FEET OF THE LAND (EXCEPT THAT PART TAKEN FOR CICERO AVENUE).

(AFFECTS PARCEL 18)
2. TAXES FOR THE YEAR 2006

2006 TAXES ARE NOT YET DUE OR PAYABLE

PERM TAX# 31-22-300-007-0000
3. EXISTING UNRECORDED LEASE MADE BY REALTY AMERICA, LANDLORD, AND IBC SALES CORPORATION, TENANT, AND ALL RIGHTS THEREUNDER OF THE LESSEES AND OF ANY PERSON OR PARTY CLAIMING BY, THROUGH OR UNDER THE LESSEES.
4. TERMS OF THE UNRECORDED LICENSE AGREEMENT MADE BY AND BETWEEN REALTY AMERICA AND IBC SALES CORPORATION