



0633231030

PPM Loan No. 0305602

Doc#: 0633231030 Fee: \$60.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 11/28/2006 11:35 AM Pg: 1 of 19

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Schwartz Cooper Chartered  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601  
Attention: Sharon Zaban Letchinger

**ASSUMPTION AND MODIFICATION AGREEMENT**

**THIS ASSUMPTION AND MODIFICATION AGREEMENT** (this "Agreement") is made as of the 22<sup>nd</sup> day of November, 2006, by and among by and among **MLRP MESSENGER LLC**, a Delaware limited liability company ("Messenger"), **WILLE ROAD LLC**, an Illinois limited liability company ("Wille") and **JACKSON NATIONAL LIFE INSURANCE COMPANY**, a Michigan corporation ("Lender").

**RECITALS:**

A. Lender has heretofore made a loan ("Loan") to Messenger, MLRP 1000 Veterans LLC, a Delaware limited liability company ("Veterans") and MLRP Crossroads LLC, a Delaware limited liability company ("Crossroads" and, together with Messenger and Veterans, "Original Borrowers") in the original principal amount of Twenty-Three Million Seven Hundred Thousand and 00/100 Dollars (\$23,700,000.00) pursuant to the terms and conditions of a Loan Agreement dated as of November 12, 2003 between Original Borrowers and Lender ("Loan Agreement"), and as evidenced by a Promissory Note dated as of November 12, 2003 in the principal amount of the Loan made payable by Original Borrowers to the order of Lender ("First Note"). As of the date hereof, the outstanding principal balance of the First Note is \$23,700,000.00.

B. The Loan was originally secured by (i) a certain Mortgage, Security Agreement and Financing Statement dated as of November 12, 2003 from Veterans to Lender recorded with the Will County, Illinois Recorder ("Will County Recorder") on November 17, 2003 as Document No. R2003285351 ("Veterans Mortgage"), which Veterans Mortgage encumbered the real property and all improvements thereon legally described in the Veterans Mortgage ("Veterans Property"); (ii) a certain Mortgage, Security Agreement and Financing Statement dated as of November 12, 2003 from Crossroads to Lender recorded with the Will County Recorder on November 17, 2003 as Document No. R2003285348 ("Crossroads Mortgage"), which Crossroads Mortgage encumbered the real property and all improvements thereon legally described in the Crossroads Mortgage ("Crossroads Property"); and (iii) a certain Mortgage, Security Agreement and Financing Statement dated as of November 12, 2003 from Messenger to Lender recorded with the Cook County, Illinois Recorder ("Cook County Recorder") on November 17, 2003 as Document No. 0332144141 ("Messenger Mortgage" and, collectively

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with the Veterans Mortgage and the Crossroads Mortgage, "Original Mortgages"), which Messenger Mortgage encumbers the real property and all improvements thereon legally described on Exhibit "A-1" hereto ("Messenger Property" and, collectively with the Veterans Property and the Crossroads Property, "Original Property").

C. The Loan was also originally secured by (i) a certain Assignment of Leases and Rents dated as of November 12, 2003, from Veterans to Lender and recorded with the Will County Recorder on November 17, 2003 as Document No. R2003285352 ("Veterans Assignment of Leases"); (ii) a certain Assignment of Leases and Rents dated as of November 12, 2003, from Crossroads to Lender and recorded with the Will County Recorder on November 17, 2003 as Document No. R2003285349 ("Crossroads Assignment of Leases"); (iii) a certain Assignment of Leases and Rents dated as of November 12, 2003, from Messenger to Lender and recorded with the Cook County Recorder on November 17, 2003 as Document No. 0332144142 ("Messenger Assignment of Leases" and, collectively with the Veterans Assignment of Leases and the Crossroads Assignment of Leases, "Original Assignments of Leases"); (iv) a certain Environmental Indemnity Agreement dated as of November 12, 2003 from Borrowers and ML Realty Partners LLC, a Delaware limited liability company ("Indemnitor") to Lender (the "Original Environmental Indemnity Agreement"); (v) a certain Indemnification Agreement dated as of November 12, 2003 from Indemnitor to Lender (the "Indemnification Agreement") and (vi) certain other loan documents (the Note, the Original Mortgages, the Original Assignments of Leases, the Original Environmental Indemnity Agreement, the Indemnification Agreement and the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, including the "First Modification" and the "Second Modification" described and defined hereinbelow, are sometimes collectively referred to herein as the "Original Loan Documents").

D. On or about July 16, 2004, Lender made a loan ("Portfolio II Loan") to MLRP Sergo LLC, a Delaware limited liability company ("Sergo"), MLRP 201 Oakton LLC, a Delaware limited liability company ("Oakton") and MLRP Terminal 1 LLC, a Delaware limited liability company ("Terminal" and, collectively with Sergo and Oakton, "Original Portfolio II Borrowers") in the principal amount of Seventeen Million and 00/100 Dollars (\$17,000,000.00) pursuant to the terms and conditions of a Loan Agreement dated as of July 16, 2006 between Original Portfolio II Borrowers and Lender ("Original Portfolio II Loan Agreement"), and as evidenced by a Promissory Note dated as of July 16, 2004 in the principal amount of the Portfolio II Loan made payable by Original Portfolio II Borrowers to the order of Lender ("Original Portfolio II Note").

E. In consideration of the Lender's agreement to make the Portfolio II Loan, pursuant to the terms and conditions of a certain First Modification Agreement dated as of July 16, 2004 by and among Original Borrowers and Lender and recorded with the Will County Recorder on July 27, 2004 as Document No. R2004138362 and recorded with the Cook County Recorder on July 22, 2004 as Document No. 0420403076 (the "First Modification"), the Original Borrowers agreed to, among other things, cross-default and cross-collateralize the Loan with the Portfolio II Loan, and the Lender allowed Original Borrowers to substitute properties as collateral for the Loan.

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F. Pursuant to the terms and conditions of a certain Assumption, Release and Modification Agreement (the "Assumption Agreement") dated as of June 7, 2006 by and among Sergo, Oakton, Terminal, MLRP 2300 Maywood LLC, a Delaware limited liability company ("Maywood"), MLRP 133 Rohlwing LLC, a Delaware limited liability company ("Rohlwing") and Lender, and recorded with the Cook County Recorder on June 16, 2006 as Document No. 061678066 and recorded with the DuPage County, Illinois Recorder (the "DuPage County Recorder") on June 26, 2006 as Document No. R2006-121319, among other things, (i) Lender agreed to substitute as collateral for the Portfolio II Loan certain property owned by each of Maywood and Rohlwing, as more particularly described in the Assumption Agreement in exchange for the release of the Oakton Property as collateral for the Portfolio II Loan, and (ii) Lender agreed to allow Maywood and Rohlwing to assume all of the Original Portfolio II Borrowers' obligations and liabilities under the Original Portfolio II Loan Documents, as amended by the Assumption Agreement, on a joint and several basis with Sergo and Terminal.

G. In consideration of Lender's agreement to allow the assumption by Maywood and Rohlwing and substitution of the Maywood Property and Rohlwing Property as collateral for the Portfolio II Loan in exchange for the release of Oakton and the Oakton Property, pursuant to the terms and conditions of a certain Second Modification Agreement dated as of June 7, 2006 by and among Original Borrower and Lender and recorded with the Will County Recorder on July 12, 2006 as Document No. R2006-113836 and recorded with the Cook County Recorder on June 16, 2006 as Document No. 06166718067 (the "Second Modification"), the Original Borrowers agreed that, among other things, the cross-default and cross-collateralization arrangements provided for in the Original Loan Documents are in full force and effect and equally apply to any documents or instruments executed by any or all of Maywood, Rohlwing, Sergo and/or Terminal (collectively, the "New Portfolio II Borrowers").

H. Pursuant to the terms of a Release, Pledge and Substitution Agreement (the "Release Modification") dated as of November 1, 2006, Lender agreed to release the Veterans Property and the Crossroads Property in exchange for the pledge of the "Substitution Escrow Amount" pending the Lender's approval and finalization of a proposed substitution of collateral for the Loan consisting of certain real property and all improvements thereon legally described on Exhibit "A-2" hereto ("Wille Property"), of which Wille is the owner of fee simple title. The Substitution Escrow Amount has been held in an account subject to the terms of an Agreement Re: Blocked Account ("Control Agreement") dated as of November 1, 2006 by and among Original Borrowers, Lender and LaSalle Bank National Association ("Bank")

I. Original Borrowers and Wille have requested that Lender agree to (i) substitute as collateral for the Loan the Wille Property in exchange for the release of the Substitution Escrow Amount back to the Original Borrowers, and (ii) increase the Loan by \$4,500,000.00 (the "Loan Increase"), with the possibility of a future advance of an additional \$4,500,000.00, which Loan Increase is evidenced by a certain Promissory Note dated of even date herewith in the principal amount of the Loan Increase made payable by Messenger and Wille (the "New Borrowers") to the order of Lender (the "Second Note"), and subject to the terms and conditions set forth below, including the assumption by Wille of all of the Original Borrowers' obligations and liabilities under the Original Loan Documents, as amended hereby, on a joint and several basis with Messenger, and the execution of the Second Note by the New Borrowers, Lender is willing to do so.

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## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreement by Lender to amend the Loan as set forth hereinbelow, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated by this reference into this Agreement. All defined terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

2. **Note Assumption.** Wille hereby assumes and agrees to be bound by and to perform all of the terms, covenants and conditions and obligations of the Original Borrowers, on a joint and several basis with Messenger, under the First Note as a "Maker". From and after the date of this Agreement, the First Note shall be construed as if the same had been originally executed by each of the New Borrowers and each and every reference to "Maker" in the Note shall hereinafter be deemed to collectively mean Messenger and Wille. Lender hereby reaffirms that, as of the date hereof, all payments under the First Note are current.

3. **Second Note.** Concurrently herewith, the New Borrowers are executing and delivering the Second Note to Lender. The Loan Increase is being funded by Lender to New Borrowers concurrently with the recording of this Agreement. The Messenger Mortgage and Messenger Assignment of Leases and each of the other Loan Documents are hereby amended to provide that they secure the obligations of New Borrowers under the Second Note in addition to the obligations of New Borrowers under the First Note. The Loan Agreement and other Loan Documents are hereby amended to provide that an Event of Default under the Second Note is also an Event of Default under the Loan Agreement and other Loan Documents.

4. **Loan Agreement Assumption.** Wille hereby assumes and agrees to be bound by and to perform all of the terms, covenants and conditions and obligations of the Original Borrowers, on a joint and several basis with Messenger, under the Loan Agreement as a "Borrower." From and after the date of this Agreement, the Loan Agreement shall be construed as if the same had been originally executed by each of Messenger and Wille and each and every reference to "Borrower" in the Loan Agreement shall hereinafter collectively mean Messenger and Wille. The Loan Agreement is further hereby amended as follows:

(a) The RECITALS are amended by changing Paragraph D. to E. and by inserting the following as Paragraph D:

"D. Wille is a limited liability company which has its principal place of business at One Pierce Place, Suite 450, Itasca, Illinois 60143. Its managing member is ML Realty. Wille is the owner of certain real estate located in the City of DesPlaines, Cook County, Illinois consisting of approximately 23.66 acres in the aggregate and legally described in Exhibit A-4 hereto (the "Wille Land"), which is improved with an office/warehouse containing 411,312 square feet of gross

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rentable area, with parking for Three Hundred Four (304) vehicles (the “Wille Improvements”).

(b) The definition of “Loan” is hereby amended to include the Loan Increase for a total loan of Twenty Eight Million Two Hundred Thousand and 00/100 Dollars (\$28,200,000.00).

(c) The definition of “Allocated Loan Amount” is hereby amended and restated as follows: “The amount of the Loan allocated to each property comprising the Project as follows: \$7,950,000.00 allocated to the Messenger Land and \$20,250,000.00 allocated to the Wille Land.”

(d) The definition of “Environmental Indemnity Agreement” is hereby deleted and replaced with the following: “The Amended and Restated Environmental Indemnity Agreement executed by Messenger, Wille and Indemnitor, as originally executed or as may be hereafter supplemented or amended from time to time in writing.”

(e) The definition of “Improvements” is hereby amended to include the Wille Improvements.

(f) The definition of “Land” is hereby amended to include the Wille Land as legally described in Exhibit A-2, and to be considered as Exhibit A-4 to the Loan Agreement.

(g) The definition of “Note” is hereby amended to include the First Note and the Second Note.

(h) The definition of “Loan Documents” is hereby amended to include each of the loan documents to be executed by Wille to fully encumber the Wille Property as collateral for the Loan as more particularly set forth in Paragraph 7 hereinbelow.

(i) The definition of “Project” is hereby amended to include the Wille Land and the Wille Improvements.

(j) The Notice provision set forth in Section 10.3 of the Loan Agreement is hereby amended to include the following additional address for notices given to the Borrowers:

“Wille Road LLC  
One Pierce Place  
Suite 450  
Itasca, Illinois 60143  
Attention: Patrick Hogan

(k) Exhibit B of the Loan Agreement containing the Permitted Exceptions is hereby amended by inserting the following for the Wille Land:



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## “WILLE LAND

The following are the permitted exceptions as shown on Pro Forma Loan Policy No. NCS-257913-CHI2 issued by First American Title Insurance Company:

Exceptions 1 through 7, inclusive in Schedule B, Part 1 and Exceptions 1 through 3, inclusive in Schedule B, Part 2.

(l) The parties hereto agree that all of the representations and warranties contained in the Loan Agreement as relate to the “Improvements, the “Land” and/or the “Project” are hereby remade and shall also apply to the Wille Land and the Wille Improvement, as the case may be.

(m) The parties hereto further agree that pursuant to the release as provided in paragraph 6 hereinbelow, each and every references to “Veterans”, “Veterans Land”, “Veterans Improvements”, “Crossroads”, “Crossroads Land”, “Crossroads Improvements” or any other terms or provisions referring to any of the foregoing terms, are hereby deleted from the Loan Agreement in their entirety.

5. **\$4,500,000 Earnout** Lender hereby agrees to disburse an additional Four Million Five Hundred Thousand and 00/100 Dollars (\$4,500,000.00) (the “Earnout Amount”) to New Borrowers at such time as the New Borrowers have satisfied the following requirements and subject to the following conditions:

- (a) There is no Default or Event of Default under any of the Loan Documents;
- (b) New Borrowers have provided to Lender a certified rent roll for all of the properties securing the Loan and the Portfolio II Loan (the “Aggregate Project”) which evidences at least a ninety percent (90%) occupancy rate in the aggregate; and
- (c) New Borrowers have provided to Lender evidence that the current “NOI” (as hereinafter defined) for the Aggregate Project is at least \$6,150,000.00. For purposes hereof, “NOI” shall mean the rental income, including tenant reimbursements received by the New Borrowers and Portfolio II Borrowers from the operation of the Aggregate Project, minus (i) market vacancy based on the most recent market surveys, and (ii) normal operating expenses of the Aggregate Project, including, but not limited to, utility costs, common area maintenance, insurance, real estate tax payments, repairs and maintenance fees, management fees, and a structural reserve equal to \$0.10 per square foot. NOI shall be calculated by Lender based upon the financial information provided to Lender by New Borrowers and so independently verified by the Lender, and the calculations so verified shall be final and binding upon the New Borrowers and the Lender.
- (d) The New Borrowers shall have until November ~~20~~, 2008 to qualify for the Earnout Amount. In the event New Borrowers are unable to timely satisfy the conditions to funding the Earnout Amount, Lender shall no longer be required to disburse the Earnout Amount.

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(e) In the event that New Borrower do timely satisfy the conditions hereinabove set forth, concurrent with the disbursement of the Earnout Amount, the interest rate for the Earnout Amount shall be determined by Lender in its sole discretion at the time of such disbursement based upon the interest rate being offered by Lender for similar loans. New Borrower shall (i) execute and deliver to Lender a note evidencing the disbursement of the Earnout Amount and such loan modification documentation in form and substance satisfactory to Lender evidencing the increase of the amount of the Loan, (ii) deliver to Lender a date-down endorsement to Lender's loan title insurance policies, increasing the amount of title insurance by the amount so disbursed, and also insuring the continuing validity and first lien priority of the Mortgages, subject only to the Permitted Exceptions, and (iii) pay all fees and expenses incurred by Lender in connection with such funding, including, without limitation, all title, recording and attorneys' fees.

6. **Waiver Letter Assumption.** Wille hereby assumes and agrees to be bound by and to perform all of the terms, covenants and conditions and obligations of the Original Borrowers, on a joint and several basis with Messenger, under the Waiver Letter as a "Borrower". From and after the date of this Agreement, the Waiver Letter shall be construed as if the same had been originally executed by each of Messenger and Wille and each and every reference to "Borrower" in the Waiver Letter shall hereinafter collectively mean Messenger and Wille.

7. **Other Loan Documents.** As a condition precedent to the agreements herein contained, Wille hereby agrees to each execute and deliver or cause to be delivered to Lender the following documents related to the Wille Property, in form and substance satisfactory to Lender in order to fully encumber the Wille Property as collateral for the Loan:

- (a) Mortgage, Security Agreement and Financing Statement;
- (b) Assignment of Leases and Rents;
- (c) UCC Financing Statements;
- (d) Amended and Restated Environmental Indemnity Agreement (which shall also be executed and delivered by Messenger and Indemnitor);
- (e) Borrower's Certificate;
- (f) Certificate and Indemnity Agreement Regarding Compliance With Building Laws;
- (g) An ALTA Loan Title Insurance Policy issued by First American Title Insurance Company insuring that Lender has a first mortgage lien position on the Wille Property as collateral for the Loan and the Portfolio II Loan;
- (h) One or more Date-Down Endorsement(s) to Lender's existing ALTA Loan Title Insurance Policies issued by First American Title Insurance Company for each of the Messengers Property, the Sergo Property, the Terminal Property, the Maywood

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Property and the Rohlwing Property, insuring that Lender has a first mortgage lien position on each such property, as the same is modified by this Agreement, as collateral for the Loan and the Portfolio II Loan; and

(i) Such other agreements, instruments, documents and other writings as may be requested by Lender to maintain the perfection and first lien priority of Lender's security interest in the Messenger Property, the Wille Property, the Sergio Property, the Terminal Property, the Maywood Property and the Rohlwing Property.

8. **Consent and Release.** By its execution hereof, Lender consents to the substitution of the Wille Property in lieu of the Veterans Property and the Crossroads Property as collateral for the Loan and consents to Wille's assumption of the First Note and the liabilities and obligations of the Original Borrowers thereunder, on a joint and several basis with Messenger, and of the other Loan Documents to which Wille has become a party as herein provided, on the terms and conditions herein set forth. Subject to the satisfaction of each of the terms and conditions herein contained, Lender hereby releases Veterans and Crossroads from their respective obligations and liabilities under each of the Original Loan Documents to which it is a party and any reference to "Veterans", "Veterans Land", "Veterans Improvements", "Veterans Property", "Crossroads", "Crossroads Land", "Crossroads Improvements", and/or "Crossroads Property" or any other terms or provisions referring to any of the foregoing terms, are hereby deleted from the Original Loan Documents in their entirety. Lender further confirms that the Veterans Property and the Crossroads Property have previously been released and discharged as collateral for the Loan. Lender agrees to direct the Bank to deliver the Substitute Escrow Amount to Original Borrowers and to terminate the Control Agreement.

9. **Cross-Default and Cross-Collateralization.** Each of Messenger and Wille hereby agree that the cross-default and cross-collateralization arrangements provided for in the "Loan Documents" (as such term is defined in the Loan Agreement as amended hereby) are in full force and effect and equally apply to any documents executed by Wille to encumber the Wille Property as collateral for the Loan.

10. **Representations and Warranties of Borrowers.** New Borrowers hereby represent, covenant and warrant to Lender as follows:

(a) The representations and warranties in each of the Loan Documents (as modified hereby) are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Loan Agreement) under any of the Loan Documents and New Borrowers do not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under any of the Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of New Borrowers and Indemnitee (as the case may be), enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.



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(d) There has been no material adverse change in the financial condition of any of the New Borrowers, Indemnitator or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statements received by Lender.

(e) As of the date hereof, neither New Borrowers nor Indemnitator have any claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Each of Messenger and Indemnitator is validly existing under the laws of the State of Delaware, is qualified to do business in Illinois and has the requisite power and authority to execute and deliver this Agreement and to perform its respective obligations under the Loan Documents as modified herein. Wille is validly existing under the laws of the State of Illinois, is qualified to do business in Illinois and have the requisite power and authority to execute and deliver this Agreement and to perform its respective obligations under the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of each of the parties comprising Borrowers and Indemnitator. This Agreement has been duly executed and delivered on behalf of each party comprising New Borrowers and Indemnitator.

## 11. Miscellaneous.

(a) As a condition precedent to the agreements contained herein, concurrently herewith, New Borrowers shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including without limitation, title charges, recording fees and reasonable attorney fees.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(c) This Agreement shall not be construed more strictly against Lender than against New Borrowers or Indemnitator merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that New Borrowers, Indemnitator and Lender have contributed substantially and materially to the preparation of this Agreement, and New Borrowers, Indemnitator and Lender each acknowledge and waive any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

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(d) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with New Borrowers or Indemnitor nor shall privity of contract be presumed to have been established with any third party.

(e) New Borrowers, Indemnitor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of New Borrowers, Indemnitor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(f) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(g) Any references to the "Loan Agreement", the "Note", the "Mortgages", the "Assignments of Leases", the "Environmental Indemnity Agreement", the "Indemnification Agreement" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to such documents as amended hereby or newly executed as herein provided.

(h) The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(i) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(j) Time is of the essence of each of New Borrowers' and Indemnitor's obligations under this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGE FOLLOWS.]**

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

**LENDER:**

**JACKSON NATIONAL LIFE  
INSURANCE COMPANY**

By: PPM Finance, Inc., its authorized agent

By:   
**David M. Zacher Executive Vice President**  
Title: \_\_\_\_\_

**NEW BORROWERS:**

**MLRP MESSENGER LLC**, a Delaware limited liability company

By: ML Realty Partners LLC, a Delaware limited liability company, its sole member

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

**WILLE ROAD LLC**, an Illinois limited liability company

By: ML Realty Partners LLC, a Delaware limited liability company, its sole member

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

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

**LENDER:**

**JACKSON NATIONAL LIFE INSURANCE COMPANY**

By: PPM Finance, Inc., its authorized agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NEW BORROWERS:**

**MLRP MESSENGER LLC**, a Delaware limited liability company

By: ML Realty Partners LLC, a Delaware limited liability company, its sole member

By: Patrick J. Hagan  
Its: SR VPI PRINCIPAL

**WILLE ROAD LLC**, an Illinois limited liability company

By: ML Realty Partners LLC, a Delaware limited liability company, its sole member

By: Patrick J. Hagan  
Its: SR VPI PRINCIPAL

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*Lender:*  
 STATE OF ILLINOIS     )  
   ) .ss  
 COUNTY OF COOK        )

I Lisa Precht, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David M. Zachar, Executive Vice President of PPM Finance, Inc., authorized agent of Jackson National Life Insurance Company, a Michigan corporation, 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 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 21<sup>st</sup> day of November, 2006.

*Lisa Precht*  
 Notary Public

My Commission Expires: 5-8-7



STATE OF ILLINOIS     )  
   ) .ss  
 COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2006 before me, a notary public in and for the State and County aforesaid, personally appeared \_\_\_\_\_, \_\_\_\_\_ of ML Realty Partners LLC, a Delaware limited liability company, the sole member of MLRP Messenger LLC, a Delaware limited liability company, who is known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his authorized capacity, and that by his/her signature on the instrument the person acted and executed the instrument on behalf of the limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
 Notary Public

My Commission Expires: \_\_\_\_\_



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STATE OF ILLINOIS    )  
  ) .ss  
COUNTY OF COOK     )

I \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, \_\_\_\_\_ of PPM Finance, Inc., authorized agent of Jackson National Life Insurance Company, a Michigan corporation, 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 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 \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

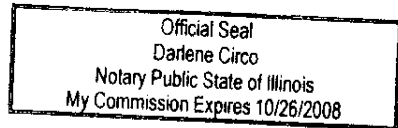
STATE OF ILLINOIS    )  
  ) .ss  
COUNTY OF DuPage    )

On the 22nd day of November, 2006 before me, a notary public in and for the State and County aforesaid, personally appeared Patrick J. Hagan, Sr VP/Principal of ML Realty Partners LLC, a Delaware limited liability company, the sole member of MLRP Messenger LLC, a Delaware limited liability company, who is known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his authorized capacity, and that by his/her signature on the instrument the person acted and executed the instrument on behalf of the limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Darlene Circo  
Notary Public

My Commission Expires: October 24, 2008





**UNOFFICIAL COPY****EXHIBIT "A-1"****MESSENGER PROPERTY****PARCEL 1:**

LOTS 1 AND 2 IN MESSENGER RESUBDIVISION OF LOT 3 IN HOWARD STREET SUBDIVISION OF PART OF THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 21, 1987 AS DOCUMENT 87568271, IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

EASEMENT FOR THE BENEFIT OF PARCEL 1 AFORESAID AS CREATED BY AGREEMENT AND GRANT OF EASEMENT FOR RAILROAD SIDE TRACK DATED JULY 20, 1979 AND RECORDED JULY 27, 1979 AS DOCUMENT 25072467, MADE BY LASALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED JULY 16, 1979 AND KNOWN AS TRUST NUMBER 101382 TO ILLINOIS TOOL WORKS, INC., A DELAWARE CORPORATION, TO USE AND ENJOY THE RAILROAD SIDE TRACK AND RELATED FACILITIES LOCATED ON THE FOLLOWING DESCRIBED LAND, TO-WIT:

A STRIP OF LAND, 19 FEET WIDE, IN PARTS OF LOT 3 (EXCEPT THE NORTH 3 ACRES THEREOF) AND LOT 6 IN GEORGE H. GEILS SUBDIVISION OF THAT PART OF THE SOUTH ONE-HALF OF THE NORTH ONE-HALF AND THE SOUTH 14.70 FEET OF THE NORTH ONE-HALF OF THE NORTH ONE-HALF OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE DES PLAINES VALLEY RAILROAD, AS SHOWN ON PLAT RECORDED SEPTEMBER 10, 1928, AS DOCUMENT NO. 10142179, ALL IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE WEST LINE OF SAID LOT 6 AND THE SOUTH LINE OF THE SAID NORTH 3 ACRES OF LOT 3; THENCE EASTERLY ON THE SAID SOUTH LINE, EXTENDED EAST, IN A STRAIGHT LINE, A DISTANCE OF 154.23 FEET; THENCE NORTHEASTERLY ON A CURVED LINE, CONVEXED SOUTHEASTERLY, TANGENT TO LAST DESCRIBED LINE, HAVING A RADIUS OF 292.06 FEET, A DISTANCE OF 226.35 FEET (ARC) TO A POINT ON THE WESTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILROAD (100 FEET WIDE); THENCE SOUTHWESTERLY ALONG SAID WESTERLY LINE, BEING A CURVED LINE, CONVEXED SOUTHEASTERLY, HAVING A RADIUS OF 5679.65 FEET, A DISTANCE OF 39.13 FEET (ARC); THENCE SOUTHWESTERLY ALONG A CURVED LINE, CONVEXED SOUTHEASTERLY, CONCENTRIC WITH THE FIRST DESCRIBED CURVED LINE, HAVING A RADIUS OF 311.06 FEET, A DISTANCE OF 205.78 FEET (ARC); THENCE WESTERLY ALONG A STRAIGHT LINE, DRAWN PARALLEL WITH FIRST DESCRIBED STRAIGHT LINE, ALSO TANGENT TO LAST DESCRIBED CURVED LINE, A DISTANCE OF 154.97 FEET TO THE WEST LINE OF SAID LOT 6 OR THE EAST LINE OF SAID LOT 3; THENCE CONTINUING WESTERLY ALONG SAID STRAIGHT LINE, A DISTANCE OF 106.29 FEET TO ITS INTERSECTION WITH A CURVED LINE, CONVEXED TO THE NORTHWEST, HAVING A RADIUS OF 311.06 FEET, A DISTANCE OF 109.28 FEET (ARC) TO THE POINT OF BEGINNING, SAID POINT BEING TANGENT TO THE FIRST DESCRIBED STRAIGHT LINE.

**UNOFFICIAL COPY****PARCEL 3:**

PERPETUAL EASEMENT FOR THE BENEFIT OF PARCEL 1 AFORESAID, AS CREATED BY EASEMENT AGREEMENT DATED NOVEMBER 1, 1988 AND RECORDED MAY 10, 1989 AS DOCUMENT 89209969, MADE BY AND AMONG O'HARE AIRPORT PARTNERS LIMITED PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP, LASALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 19, 1983 AND KNOWN AS TRUST NO. 104330 AND LASALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 1, 1968 AND KNOWN AS TRUST NO. 38615, TO USE AND ENJOY RAILROAD SIDE TRACK AND RELATED FACILITIES OVER AND UPON A PARCEL OF LAND DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 19 FEET WIDE, IN PART OF LOT 3 (EXCEPT THE NORTH 3 ACRES THEREOF) IN GEORGE H. GEILS' SUBDIVISION OF THAT PART OF THE SOUTH 1/2 OF THE NORTH 1/2 AND THE SOUTH 14.70 FEET OF THE NORTH 1/2 OF THE NORTH 1/2 OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE RIGHT OF WAY OF THE DES PLAINES VALLEY RAILROAD AS SHOWN ON PLAT RECORDED SEPTEMBER 10, 1928, AS DOCUMENT NO. 10142179, ALL IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF THE NORTH 3 ACRES OF SAID LOT 3 AND THE EAST LINE OF SAID LOT 3; THENCE WEST ALONG THE SOUTH LINE OF THE NORTH 3 ACRES OF SAID LOT 3, A DISTANCE OF 345.05 FEET TO ITS INTERSECTION WITH A LINE DRAWN PARALLEL WITH AND 950 FEET EAST OF THE WEST LINE OF THE NORTHWEST 1/4 OF SECTION 30, AFORESAID (MEASURED AT RIGHT ANGLES THERETO); THENCE SOUTH ALONG SAID PARALLEL LINE, A DISTANCE OF 19.02 FEET; THENCE EAST PARALLEL WITH THE AFORESAID SOUTH LINE, A DISTANCE OF 238.76 FEET; THENCE NORTHEASTERLY ON A CURVED LINE, CONVEXED TO THE NORTHWEST, HAVING A RADIUS OF 311.06 FEET, A DISTANCE OF 109.28 FEET (ARC) TO THE POINT OF BEGINNING.

Parcel Identification Nos.: 09-30-101-034 and 09-30-101-035

Property Address: Messenger Industrial Complex  
100 E. Howard Avenue and 1905 S. Mt. Prospect Road  
Des Plaines, IL

# UNOFFICIAL COPY

## EXHIBIT "A-2"

### WILLE PROPERTY

#### Legal Description:

That part of the Northeast quarter of Section 25, Township 41 North, Range 11, East of the Third Principal Meridian, lying Northerly of the Illinois State Toll Highway Authority Property, and described as follows:

Beginning at the Northeast corner of Lot 1 in Harry Wille's Subdivision of the West 400.0 feet of the East 832.0 feet of the North 200.0 feet of the Southeast quarter of said Northeast quarter, according to the Plat thereof recorded July 21, 1958 as Torrens Document LR1807516; thence South 00 degrees 48 minutes 39 seconds East, along the East line of said Lot 1, a distance of 167.00 feet to the Southeast corner of said Lot 1; thence South 59 degrees 06 minutes 16 seconds West, along the South line of said Lot 1, a distance of 400.00 feet to the Southwest corner of said Lot 1; thence South 00 degrees 48 minutes 39 seconds East, along the West line of the East 832 feet of the aforesaid Southeast quarter of the Northeast quarter, 874.41 feet to a line being 82.50 feet Northerly of and parallel with the Northerly line of Parcel N-42.1 as described on a Warranty Deed recorded July 8, 1957 in Volume 1502, Page 405 as Document Number 1747087; thence North 70 degrees 36 minutes 56 seconds West, along said parallel line, 781.12 feet to a line being 82.50 feet Northerly of and parallel with the Northerly line of Parcel N-42.2 also described on said Warranty Deed; thence South 69 degrees 57 minutes 18 seconds West, along the last described parallel line, 450.34 feet to the East line of the West 680.02 feet of said Northeast quarter; thence North 00 degrees 48 minutes 16 seconds West, along the last described line, 951.30 feet to the North line of the Southwest quarter of said Northeast quarter; thence North 89 degrees 06 minutes 16 seconds East, along the last described line, 1158.20 feet to the aforementioned West line of the East 832 feet of the Southeast quarter of the Northeast quarter; thence South 00 degrees 48 minutes 39 seconds East, along the last described line, 33.00 feet to the Northwest corner of said Lot 1; thence North 89 degrees 06 minutes 16 seconds East, along the North line of said Lot 1, a distance of 400.00 feet, to the point of beginning, in Cook County, Illinois.

#### EXCLUDING THE FOLLOWING:

Lot 1 in Harry Wille's Subdivision of the West 400.0 feet of the East 832.0 feet of the North 200.0 feet of the Southeast quarter of the Northeast quarter of Section 25, Township 41 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded July 21, 1958 as Torrens Document Number LR18075616, in Cook County, Illinois.

Property Address: 251 Wille Road, Des Plaines, IL

PIN: 08-25-202-019



