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Doc#: 0709934074 Fee: \$46.00  
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Cook County Recorder of Deeds  
Date: 04/09/2007 02:21 PM Pg: 1 of 12

Gary K. Fordyce, Esq.  
LaSalle Bank Corporation  
135 South La Salle Street, Suite 925  
Chicago, Illinois 60603

## PERMANENT TAX INDEX NUMBERS:

11-19-301-005  
11-19-301-006  
11-19-301-007

## Property Address:

996-1012 Main Street  
Evanston, Illinois 60202

DC 996047  
DEC 10F 2 HB

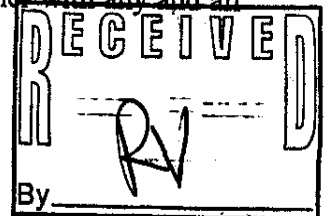
12

## ASSUMPTION AND CONSENT AGREEMENT

This ASSUMPTION AND CONSENT AGREEMENT dated as of April 21, 2005 (the "Assumption Agreement"), is executed by and among EVANSHIRE PROPERTIES, L.L.C., an Illinois limited liability company (the "Assignor"), whose address is 1261 Wiley Road, Unit L, Schaumburg, Illinois 60173, MDM MAIN, L.L.C., a Colorado limited liability company (the "Assignee"), whose address is 1305 Wiley Road, Suite 106, Schaumburg, Illinois 60173, MICHAEL D. AUFRECHT, INDIVIDUALLY, AND AS TRUSTEE OF THE MICHAEL D. AUFRECHT DECLARATION OF TRUST DATED JULY 1, 1991 (collectively, "Aufrecht"), whose address is 6612 North LeMai, Lincolnwood, Illinois 60712, and MICHAEL V. BARRY ("Barry"; Aufrecht and Barry each being referred to herein as a "Guarantor", and collectively being referred to herein as the "Guarantors"), whose address is 500 Timber Springs, Edwards, Colorado, 81632, and LASALLE BANK NATIONAL ASSOCIATION, a national banking association (the "Lender"), whose address is 135 South La Salle Street, Chicago, Illinois 60603, Attention: Commercial Real Estate.

## RECITALS:

A. The Lender has previously made a loan (the "Loan") to the Assignor, as evidenced by that certain Mortgage Note dated January 25, 2000 in the original principal amount of Two Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$2,750,000.00), executed by the Assignor and made payable to the order of and delivered to the Lender (together with any and all



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notes issued in renewal thereof or in substitution or replacement therefor being collectively referred to herein as the "Note").

B. As of the date hereof, the Assignor is the record owner of the fee simple estate in and to the real estate described in Exhibit "A" attached hereto and by reference incorporated herein (the "Premises").

C. The Loan is secured by, among other things, the following documents (together with the Note and any and all other documents evidencing or securing the Loans being collectively referred to herein as the "Original Loan Documents"):

- (i) Mortgage, Security Agreement and Financing Statement dated as of January 25, 2000, executed by the Assignor to and for the benefit of the Lender, and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on January 27, 2000 as Document No. 00072389 (the "Mortgage"), and which Mortgage encumbers the Premises;
- (ii) Assignment of Rents dated as of January 25, 2000, executed by the Assignor to and for the benefit of the Lender and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on January 27, 2000 as Document No. 00072390 (the "Assignment of Rents"), and which Assignment of Rents encumbers the Premises;
- (iii) Security Agreement dated as of January 25, 2000, executed by the Assignor, as debtor, to and for the benefit of the Lender, as secured party, and accepted by the Trustee (the "Security Agreement"), which Security Agreement granted to the Lender a security interest in all personal property of the Assignor related to the Premises;
- (iv) Environmental Indemnity Agreement dated January 25, 2000, jointly and severally executed by the Guarantors and Donal P. Barry, Sr. ("Donal Barry") to and for the benefit of the Lender (the "Environmental Indemnity"); and
- (v) Guaranty dated January 25, 2000, jointly and severally executed by the Guarantors and Donal Barry to and for the benefit of the Lender (the "Guaranty").

D. Under and pursuant to that certain First Modification of Loan Documents dated as of January 25, 2003, executed by and among the Assignor, the Guarantors, Donal Barry and the Lender, and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on February 13, 2003 as Document Number 0030212415 (the "First Amendment"; the Original Loan Documents, as modified and amended by the First Amendment being collectively referred to herein as the "Loan Documents"), the maturity date of the Loan was extended from January 25, 2003 to January 25, 2008, the principal amount of the Loan was increased to Two Million Six Hundred Seventy Thousand and 00/100 Dollars (\$2,670,000.00), and the interest rate and repayment terms of the Loan were modified.

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E. Pursuant to that certain Quit Claim Deed dated even date herewith, executed by the Assignor to the Assignee and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on May 12, 2005 as Document No. 0513227018 (the "Deed"), the Assignor has assigned to the Assignee all of the Assignor's right, title and interest in and to the Premises, and in connection therewith, the Assignor has requested to assign to the Assignee all of the obligations and liabilities of the Assignor to the Lender for the Loan under and pursuant to the Loan Documents, and the Assignor, the Assignee and the Guarantors have requested that the Lender consent to (i) such assignment, and (ii) the release of Donal Barry from all obligations and liabilities owing to the Lender under and pursuant to the Guaranty.

E. The Lender has required, as a condition of the Lender's consenting to the assignment of the Premises from the Assignor to the Assignee, that the Assignee assume all of the obligations and liabilities of the Assignor for the Loan under and pursuant to the Loan Documents.

NOW, THEREFORE, in consideration of the foregoing and of the Lender making the Loans, and other valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Assumption of Obligations by the Assignee. The Assignee hereby assumes all of the obligations and liabilities of the Assignor to the Lender for the Loan, of which the principal amount of Two Million Seven Hundred Forty One Thousand Six Hundred Seventy Five and /100 Dollars (\$2,741,675.00), remains outstanding as of the date hereof, under and pursuant to the Loan Documents, and agrees to perform and comply with each covenant, term, condition and agreement of the Loan Documents required to be performed by the Assignor thereunder. The Assignee further covenants, represents and warrants that each of the representations and warranties made by the Assignor in the Loan Documents remains true and correct as of the date hereof.

2. Approval of Assignment; Release of the Assignor. The Lender hereby consents and approves the assignment and transfer of the Premises from the Assignor to the Assignee, subject to the terms and conditions of this Assumption Agreement and the Loan Documents, as amended hereby. The Lender hereby releases the Assignor from any and all obligation and liability under the Loan Documents.

3. Release of Donal Barry. The Lender hereby expressly releases Donal Barry from any and all obligation and liability owing to the Lender under and pursuant to the Guaranty, and the Assignee and each Guarantor hereby consents to such release of Donal Barry.

4. Further Assurances. The Assignee hereby (a) expressly reaffirms all of the obligations and liabilities of the Assignor to the Lender under and pursuant to the Loan Documents in all respects, (b) agrees that such obligations and liabilities to the Lender under and pursuant to the Loan Documents shall continue in full force and effect and shall not be discharged, limited, impaired or affected in any manner whatsoever, (c) agrees that the acceptance by the Lender of this Assumption Agreement and the assumption by the Assignee of

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the obligations and liabilities of the Assignor under the Loan Documents shall not in any manner whatsoever (i) impair or affect the liability of the Assignee to the Lender under the Loan Documents, (ii) prejudice, waive, or be construed to impair, affect, prejudice or waive the rights and abilities of the Lender at law, in equity or by statute, against the Assignee pursuant to the Loan Documents, and (iii) except as expressly set forth in this Assumption Agreement, release or discharge, nor be construed to release or discharge, any of the obligations and liabilities owing to the Lender by any party under the Loan Documents, and (d) represents that each of the representations and warranties made by the Assignor in the Loan Documents remain true and correct as of the date hereof.

5. Continuing Effect. All of the provisions of the Loan Documents are incorporated herein and renewed as if re-executed as of the date of this Assumption Agreement. To the extent any of the terms, provisions, representations, warranties or covenants set forth in the Loan Documents differ from or are inconsistent with, the terms of this Assumption Agreement, the provisions of this Assumption Agreement shall govern and control.

6. Reaffirmation of Guaranty. Each of the Guarantors hereby expressly (a) consents to the execution by the Assignor and the Assignee of this Assumption Agreement and the transfer of the Premises from the Assignor to the Assignee; (b) acknowledges that the Guaranty is hereby modified and amended so that all references in the Guaranty to (i) the Borrower (as defined in the Guaranty) shall be deemed to be references to the Assignee, (ii) the Guaranteed Debt (as defined in the Guaranty) shall be deemed to mean and include all of the obligations and liabilities owing to the Lender from time to time under and pursuant to the Note and the other Loan Documents, as modified, amended and assumed by the Assignee under and pursuant to this Assumption Agreement, and (iii) the Guaranty shall mean and refer to such Guaranty, as modified and amended by this Assumption Agreement, (c) reaffirms all of his joint and several obligations under the Guaranty, as modified and amended by this Assumption Agreement, in all respects; (d) agrees that the acceptance by the Lender of this Assumption Agreement and the assumption by the Assignee of the obligations and liabilities of the Assignor under the Loan Documents shall not in any manner whatsoever (i) impair or affect the liability of each Guarantor to the Lender under the Guaranty, (ii) prejudice, waive, or be construed to impair, affect, prejudice or waive the rights and abilities of the Lender at law, in equity or by statute, against the Guarantors pursuant to the Guaranty, and/or (iii) release or discharge, nor be construed to release or discharge, any of the obligations and liabilities owing to the Lender by any Guarantor under the Guaranty, and (e) represents that each of the representations and warranties made by the Guarantors in the Guaranty remains true and correct as of the date hereof. In addition, Aufrecht hereby agrees and acknowledges that all references to Aufrecht in the Guaranty and in any of the other Loan Documents shall be deemed to mean and be references to Michael D. Aufrecht, individually, and as Trustee of the Michael D. Aufrecht Declaration of Trust dated July 1, 1991.

7. Assignee's Representations and Warranties. In addition to the representations and warranties set forth in the Loan Documents, the Assignee hereby represents and warrants to the Lender as follows:

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(a) Organization. The Assignee is a manager-managed limited liability company duly organized, existing and in good standing under the laws of the State of Colorado, with full and adequate power to carry on and conduct its business as presently conducted, and is duly licensed or qualified in all foreign jurisdictions wherein the nature of its activities require such qualification or licensing, and B & A Associates, L.L.C. is the Manager (the "Manager") of the Assignee, is a limited liability company duly organized, existing and in good standing under the laws of the State of Illinois, with full and adequate power to carry on and conduct its business as presently conducted, is duly licensed or qualified in all foreign jurisdictions wherein the nature of its activities require such qualification or licensing, and has full power to execute this Assumption Agreement for and on behalf of the Assignee.

(b) Authorization; Validity. The Assignee has full right, power and authority to enter into this Assumption Agreement, to make the borrowings under the Loan and to perform all of the duties and obligations under the Note and the other Loan Documents. The execution and delivery of this Assumption Agreement will not, nor will the observance or performance of any of the matters and things in this Assumption Agreement and in the Loan Documents, violate or contravene any provision of law or the articles of organization and operating agreements of the Assignee and the Manager. All necessary and appropriate action has been taken on the part of the Assignee and the Manager to authorize the execution and delivery of this Assumption Agreement and the observance or performance of the provisions of the Loan Documents. This Assumption Agreement and the Loan Documents are valid and binding agreements and contracts of the Assignee in accordance with their respective terms. No basis presently exists for any claim against the Lender under this Assumption Agreement, the Loan Documents or with respect to the Loan, and the enforcement of this Assumption Agreement, the Note and the other Loan Documents is subject to no defenses of any kind.

(c) Absence of Breach. The execution, delivery and performance of this Assumption Agreement, the Note, the other Loan Documents and any other documents or instruments to be executed and delivered in connection with this Assumption Agreement shall not: (i) violate any provisions of law or any applicable regulation, order, writ, injunction or decree of any court or governmental authority, or (ii) conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions, or provisions of any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind to which the Assignee, the Manager or any of the Guarantors is a party, or by which the Assignee, the Manager, any of the Guarantors or any of their respective property or assets may be bound.

(d) Good Title. As of the date of the recording of the Deed and at all times thereafter until the Note is paid in full, the Assignee will have good and marketable fee simple title to the Premises, free from any lien, security interest, encumbrance or other right, title or interest of any other person or entity other than the Lender.

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(e) Adverse Conditions. To the best of the Assignee's knowledge, no condition, circumstance, document, restriction, litigation or proceeding (or threatened litigation or proceeding or basis therefor) exists which could adversely affect the validity or priority of the liens and security interests granted the Lender under this Assumption Agreement and the Loan Documents, which could materially adversely affect the ability of the Assignee to perform its obligations under the Loan Documents, which would constitute an Event of Default under any of the Loan Documents or which would constitute such an Event of Default with the giving of notice or lapse of time or both.

(f) Compliance with Laws. The nature and transaction of the business and operations of the Assignee and the use of its properties and assets, including, but not limited to, the present use and occupancy of the Premises, will not violate or conflict with any applicable law, statute, ordinance, rule, regulation or order of any kind including without limitation zoning, building, environmental, land use, noise abatement, occupational health and safety or other laws, any building permit or any condition, grant, easement, covenant, condition or restriction, whether recorded or not.

(g) Business Purpose. The proceeds of the Loan will be used for the purposes specified in 815 ILCS 205/4(1)(c), as amended from time to time; and that the principal obligation evidenced by the Note and secured by the Loan Documents constitutes a business loan within the purview and operation of said section.

(h) Margin Stock. No portion of the proceeds of the Note will be used by the Assignee, either directly or indirectly, for the purpose of purchasing or carrying any margin stock, within the meaning of Regulation U of the Regulations of the Board of Governors of the Federal Reserve System.

8. Conditions Precedent. This Assumption Agreement shall become effective as of the date above first written after receipt by the Lender of the following documents:

(a) Assumption Agreement. This Assumption Agreement duly executed by the parties hereto;

(b) Date-down Endorsement. A Date-Down Endorsement issued by First American Title Insurance Company to its Loan Policy No. DC996047 dated January 27, 2000, dating down title to the Premises to reflect the recordation of the Deeds and this Assumption Agreement and reflecting the transfer of the fee interest in the Premises from the Assignor to the Assignee; and

(c) Other Matters. Such other documents, certificates, resolutions and opinions of counsel as the Lender may reasonably request.

9. Successors and Assigns. This Assumption Agreement shall be binding upon the parties hereto and their respective successors, assigns and legal representatives, and shall inure to

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the benefit of the parties hereto and to the successors, assigns and legal representatives of the Lender.

10. Expenses. The Assignee shall pay all costs and expenses in connection with the preparation of this Assumption Agreement, including, without limitation, reasonable attorney's fees and reasonable time charges of attorney's who may be employees of the Lender or any affiliate of the Lender. The Assignee shall pay any and all stamp and other taxes, UCC search fees, recording, filing, title and endorsement fees and other costs in connection with the execution and delivery of this Assumption Agreement, and agree to save and hold harmless the Lender from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such fees.

11. Governing Law; Counterparts. This Assumption Agreement shall be construed in accordance with and governed by the laws of the State of Illinois, and it may be executed in any number of counterparts, all of which shall constitute one and the same agreement.


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IN WITNESS WHEREOF, the parties hereto have executed this Assumption and Consent Agreement as of the date first above written.

ASSIGNOR:

EVANSHIRE PROPERTIES, L.L.C.,  
an Illinois limited liability company


By: B & A ASSOCIATES, L.L.C., an  
Illinois limited liability company  
Its: Manager

By:   
Name: Michael D. Aufrecht  
Title: Manager

ASSIGNEE:  
company

MDM MAIN, L.L.C., a Colorado limited liability

By: B & A ASSOCIATES, L.L.C., an  
Illinois limited liability company  
Its: Manager

By:   
Name: Michael D. Aufrecht  
Title: Manager

GUARANTORS:

  
MICHAEL D. AUFRECHT, INDIVIDUALLY,

AND

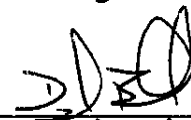
AS TRUSTEE OF THE MICHAEL D. AUFRECHT  
DECLARATION OF TRUST DATED JULY 1,

1991

  
MICHAEL V. BARRY

LENDER:

LASALLE BANK NATIONAL ASSOCIATION,  
a national banking association

By:   
Name: Douglas Brodeur  
Title: VP



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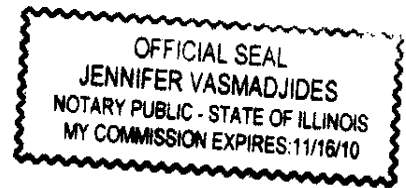
STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that MICHAEL D. AUFRECHT, the Manager of B & A ASSOCIATES, L.L.C., an Illinois limited liability company, the Manager of EVANSHIRE PROPERTIES, L.L.C., an Illinois limited liability company, 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 as such Manager, he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Limited Liability Companies, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28 day of February, 2007.

J. Vasmadjides  
Notary Public  
My Commission Expires:

11/16/10



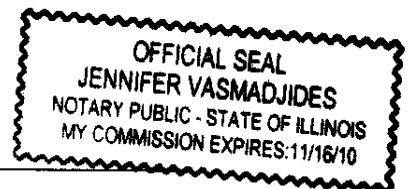
STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that MICHAEL D. AUFRECHT, the Manager of B & A ASSOCIATES, L.L.C., an Illinois limited liability company, the Manager of MDM MAIN, L.L.C., a Colorado limited liability company, 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 as such Manager, he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Limited Liability Companies, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28 day of February, 2007.

J. Vasmadjides  
Notary Public  
My Commission Expires:

11/16/10



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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

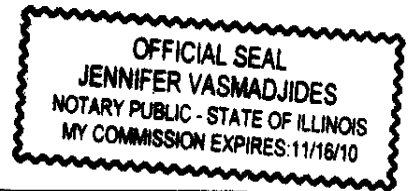
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that MICHAEL D. AUFRECHT, INDIVIDUALLY, AND AS TRUSTEE OF THE MICHAEL D. AUFRECHT DECLARATION OF TRUST DATED JULY 1, 1991, who is personally known to me to be the same person whose name is subscribed 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 and as the free and voluntary act of said Trust, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28 day of February, 2007.

J. Vasmadjides  
Notary Public

My Commission Expires:

11/16/10



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

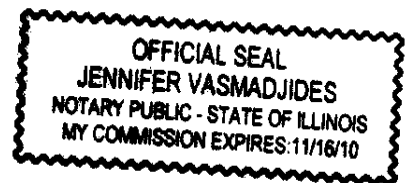
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that MICHAEL V. BARRY, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed 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 28 day of February, 2007.

J. Vasmadjides  
Notary Public

My Commission Expires:

11/16/10



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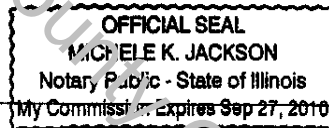
STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK        )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Doug Broderick, the VP of LASALLE BANK NATIONAL ASSOCIATION, a national banking association, 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 as such VP, he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said banking association, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 20 day of <sup>March</sup>~~February~~, 2007.

Michele K. Jackson  
Notary Public

My Commission Expires:



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## EXHIBIT "A"

### LEGAL DESCRIPTION OF REAL ESTATE

LOTS 5, 6, 7, 8 AND 9 IN BLOCK 3 IN ADAMS AND BROWN'S ADDITION TO EVANSTON, BEING A SUBDIVISION OF THAT PART OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE SOUTH WEST 1/4 OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF RIDGE ROAD (EXCEPT THE SOUTH 2 FEET THEREOF) IN COOK COUNTY, ILLINOIS.

### PROPERTY ADDRESS OF REAL ESTATE:

996-1012 Main Street  
Evanston, Illinois 60202

### PERMANENT TAX IDENTIFICATION NUMBER:

11-19-301-005  
11-19-301-006  
11-19-301-007

GKF:sw  
March 2, 2007  
(198077584)