

UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:



Doc#: 1231216027 Fee: \$72.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 11/07/2012 11:52 AM Pg: 1 of 13

Riemer & Braunstein LLP
Three Center Plaza, 6th Floor
Boston, Massachusetts 02108
Attention: Steven J. Weinstein, Esquire
AFTER RECORDING RETURN TO:
Dimetri Adeyemi
Fidelity National Title
1400 Post Oak Blvd., Suite 740
Houston, Texas 77056

FIRST AMENDMENT TO MORTGAGE AND ASSIGNMENT OF RENTS AND LEASES

THIS **FIRST AMENDMENT TO MORTGAGE AND ASSIGNMENT OF RENTS AND LEASES** (this "Amendment"), is dated as of the 31st day of October, 2012, by **THE REALTY ASSOCIATES FUND VIII, L.P.**, a Delaware limited partnership ("Mortgagor"), whose address is c/o TA Associates Realty, 28 State Street, 10th Floor, Boston, Massachusetts 02109 and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, whose address is 101 Federal Street, 28th Floor, Boston, Massachusetts 02110, as administrative agent for a syndicate of lenders ("Lenders") and any Required Derivatives Provider (as defined in the Loan Agreement [as hereinafter defined]) (Wells Fargo Bank, National Association, in such capacity as administrative agent is hereinafter referred to as "Administrative Agent" or "Mortgagee") as specifically provided in the Loan Agreement (as hereinafter defined).

WITNESSETH:

WHEREAS, Mortgagor, by that certain Mortgage and Assignment of Rents and Leases dated as of January 27, 2010, which was recorded on January 28, 2010, with the Office of the Cook County Recorder of Deeds, Illinois (the "Recorder"), as Document No. 1002844050, as affected by that certain Partial Release of Mortgage dated June 29, 2010, and recorded with the Recorder on July 7, 2010, as Document No. 1018831067, and by that certain Partial Release dated October 5, 2011, and recorded with the Recorder on October 21, 2011, as Document No. 1129422052 (as amended, collectively, the "Mortgage"), granted, conveyed, assigned, bargained, sold, released, aliened, transferred and remised to Administrative Agent for the benefit of the Lenders and any Required Derivatives Provider certain real property located in Cook County, Illinois, as more particularly described on Exhibit "A" attached hereto, to secure indebtedness in the maximum aggregate outstanding principal amount of Five Hundred Eighty-Five Million and NO/100ths Dollars (\$585,000,000.00) (the "Original Loan"); and

WHEREAS, Mortgagor, Administrative Agent and the Lenders entered into that certain Amended and Restated Credit Agreement dated as of January 27, 2010, which was amended by that certain First Amendment to Amended and Restated Credit Agreement dated as of April 30, 2010, and by that certain Second Amendment to Amended and Restated Credit Agreement dated as of November 29, 2010, and by that certain Third Amendment to Amended and Restated

UNOFFICIAL COPY

Credit Agreement dated as of September 15, 2011 (as amended, collectively, the "First Amended and Restated Loan Agreement"); and

WHEREAS, Mortgagor has requested certain modifications to the First Amended and Restated Loan Agreement and certain other Loan Documents (as defined in the Loan Agreement), all as set forth in that certain Second Amended and Restated Credit Agreement dated as of the date hereof by and among Mortgagor, Administrative Agent and the Lenders (the "Second Amended Loan Agreement"; the First Amended and Restated Loan Agreement, as amended and restated by the Second Amended Loan Agreement, together with all subsequent extensions, renewals, modifications, substitutions and amendments thereof, collectively, the "Loan Agreement"), including, among other things for, the reduction in the maximum aggregate outstanding principal amount to Three Hundred Ninety-Five Million and NO/100ths Dollars (\$395,000,000.00) (the "Loan"); and

WHEREAS, the Loan is evidenced by certain Promissory Notes dated as of the date hereof, executed by Mortgagor and payable to the order of the Lenders (individually and collectively, together with any replacement promissory notes from time to time issued pursuant to the Loan Agreement, and as may be renewed, amended, modified, restated, extended or supplemented from time to time, the "Note"); and

WHEREAS, Mortgagor and Administrative Agent desire to execute and deliver this Amendment to reflect such modifications to the Mortgage, all as more particularly described herein.

NOW THEREFORE, for and in consideration of the recitals set forth above and made a part hereof, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned do hereby agree as follows:

1. Capitalized terms used herein and not defined shall have the meaning ascribed to such terms in the Mortgage.
2. The Maturity Date (as such term is defined in the Loan Agreement) is October 31, 2015. Such Maturity Date may be extended to October 31, 2016, in accordance with the terms and conditions set forth in the Loan Agreement.
3. The interest rate under the Loan Agreement is a variable rate equal to, as the case may be, (i) the Adjusted LIBO Rate plus the Applicable Margin, or (ii) the Alternate Base Rate plus the Applicable Margin (as such terms are defined in the Loan Agreement), subject to adjustment in accordance with the terms and conditions set forth in the Loan Agreement, provided however that in no event shall the interest rate under the Loan Agreement exceed 25%.
4. Mortgagor represents and warrants to Mortgagee (i) that the proceeds of the Note secured by the Mortgage will be used for the purposes specified in 815 ILCS 205/4(1)(I) (or any substitute, amended or replacement statute), and that the indebtedness secured by the Mortgage constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(I), and (ii) that the Loan evidenced by the Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 et seq.

UNOFFICIAL COPY

5. The parties hereto agree that (i) the term "Loan Agreement" as used in the Mortgage and the other Loan Documents shall mean the Second Amended Loan Agreement, together with all subsequent extensions, renewals, modifications, substitutions and amendments thereof, and (ii) the terms "Loan", "Note", and "Loan Documents", each as used in the Mortgage and the other Loan Documents, shall mean the Loan, Note and the Loan Documents, respectively, each as amended by the Second Amended Loan Agreement, together with all subsequent extensions, renewals, modifications, substitutions and amendments thereof.

6. Except as expressly modified and amended hereby, the Mortgage shall continue in full force and effect and, as thus modified and amended, is hereby ratified, confirmed and approved. Further, it is confirmed that the Mortgage shall secure, and the term Secured Obligations shall include, the Loan, as the same is amended, extended and/or modified from time to time. This Amendment applies to, inures to the benefit of and is binding on the parties hereto, and their respective successors and assigns.

7. This Amendment shall be governed by and construed in accordance with, the laws of the State of Illinois.

8. This Amendment may be executed in multiple counterparts all of which taken together shall constitute one executed original.

9. THIS AMENDMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES FOLLOW]

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

All the certain real property located in the County of Cook, State of Illinois, described as follows:

River Road – 3708 (Tax ID # 12-22-100-163-0000)

PARCEL 1:

THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE NORTHWEST FRACTIONAL 1/4 OF FRACTIONAL SECTION 22, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE 66-FOOT RIGHT OF WAY OF THE CHICAGO, MINNEAPOLIS AND SAULT SAINTE MARIE RAILWAY COMPANY; EXCEPT THAT PART BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF THE NORTHWEST FRACTIONAL 1/4 OF SAID FRACTIONAL SECTION 22 AFORESAID, WITH THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 1 IN BLOCK 4 IN VOLK BROTHERS' RIVER DRIVE ADDITION TO FRANKLIN PARK IN ROBINSON'S RESERVE AND FRACTIONAL SECTION 22 AFORESAID; THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST ALONG SAID SOUTH LINE OF THE NORTHWEST FRACTIONAL 1/4, A DISTANCE OF 157.21 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN 10.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE, AND ITS NORTHERLY EXTENSION OF MARTENS STREET, (BEING A LINE 33.00 FEET WEST OF AND PARALLEL WITH THE WEST LINE OF BLOCK 4) IN SAID VOLK BROTHERS' RIVER DRIVE ADDITION TO FRANKLIN PARK; THENCE NORTH 00 DEGREE, 16 MINUTES, 15 SECONDS WEST, A DISTANCE OF 30.00 FEET ALONG SAID LINE 10.00 FEET EAST OF AND PARALLEL TO A LINE 30.00 FEET NORTH OF AND PARALLEL WITH THE AFORESAID SOUTH LINE OF THE NORTHWEST FRACTIONAL 1/4; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 157.29 FT TO THE NORTHERLY EXTENSION, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING; AND EXCEPT THAT PART BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHWEST FRACTIONAL 1/4 OF SECTION 22, AFORESAID; THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST ALONG THE SOUTH LINE OF THEREOF, A DISTANCE OF 293.42 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND; THENCE CONTINUING SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 179.33 FEET TO THE POINT OF INTERSECTION WITH THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 1 IN BLOCK 4 IN VOLK BROTHERS' RIVER DRIVE ADDITION TO FRANKLIN PARK IN ROBINSON'S RESERVE AND FRACTIONAL SECTION 22, AFORESAID; THENCE NORTH 00 DEGREES, 07 MINUTES, 47 SECONDS WEST, A DISTANCE OF 30.00 FEET ALONG SAID NORTHERLY EXTENSION TO A LINE DRAWN 30.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST FRACTIONAL 1/4 OF FRACTIONAL SECTION 22; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 139.83 FEET; THENCE SOUTH 53 DEGREES, 14 MINUTES, 23 SECONDS EAST, A DISTANCE OF 50.13 FEET TO THE POINT OF BEGINNING; AND EXCEPT THAT PART DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID NORTHWEST FRACTIONAL 1/4 OF SECTION 22 AFORESAID; THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST ALONG THE SOUTH LINE THEREOF, A DISTANCE OF 293.42 FEET; THENCE NORTH 53 DEGREES, 14 MINUTES, 23 SECONDS WEST, A DISTANCE OF 50.13 FEET TO A LINE DRAWN 30.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST FRACTIONAL 1/4 OF THE FRACTIONAL SECTION 22; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 333.43 FEET TO THE EAST LINE OF SAID NORTHWEST FRACTIONAL 1/4; THENCE SOUTH 00 DEGREES, 16 MINUTES, 53 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 30.00 FT TO THE POINT OF BEGINNING AND EXCEPT THAT PART

UNOFFICIAL COPY

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF SOUTH 1/2 OF THE SOUTH 1/2 OF THE NORTHWEST FRACTIONAL 1/4 AFORESAID, WITH THE WEST LINE OF THE SOUTH SECTION OF ALEXANDER ROBINSON'S RESERVE IN TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, AFORESAID; THENCE SOUTH 00 DEGREES, 16 MINUTES, 53 SECONDS EAST ALONG SAID WEST LINE, A DISTANCE OF 49.61 FEET TO A POINT ON A LINE DRAWN 608.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE NORTHWEST FRACTIONAL 1/4 AFORESAID; THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST ALONG THE AFORESAID PARALLEL LINE, A DISTANCE OF 1096.78 FEET TO THE EASTERLY LINE OF THE 66-FOOT RIGHT OF WAY AFORESAID; THENCE NORTH 13 DEGREES, 01 MINUTES, 00 SECONDS WEST ALONG SAID EASTERLY LINE, A DISTANCE OF 51.85 FEET TO SAID NORTH LINE; THENCE SOUTH 89 DEGREES, 57 MINUTES, 12 SECONDS EAST ALONG SAID NORTH LINE, A DISTANCE OF 1108.21 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Includes Building Address: 3708 River Road
Franklin Park, IL 60131

UNOFFICIAL COPY

PARCEL 2:

EASEMENTS FOR THE BENEFIT OF PARCEL 1, AS CREATED BY AMENDED AND RESTATED RECIPROCAL EASEMENT AGREEMENT BY AND BETWEEN OLD RIVER, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY AND HSA-PCP O'HARE EAST I, LTD, A TEXAS LIMITED PARTNERSHIP DATED OCTOBER 25, 2000 AND RECORDED NOVEMBER 3, 2000 AS DOCUMENT 00868356 AND AMENDMENT TO AMENDED AND RESTATED RECIPROCAL EASEMENT AGREEMENT DATED AS OF JANUARY 28, 2005 AND RECORDED FEBRUARY 9, 2005 AS DOCUMENT 0504039062 MADE BY AND BETWEEN HSA-PCP O'HARE EAST I, LTD, A TEXAS LIMITED PARTNERSHIP AND OLD RIVER, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, INCLUDING THE FOLLOWING:

(A) 40-FOOT CROSS ACCESS EASEMENT AND AN ACCESS EASEMENT FOR PEDESTRIAN, VEHICULAR INGRESS AND EGRESS TO AND FROM IVANHOE ROAD AND RIVER ROAD, AS SHOWN ON EXHIBIT C ATTACHED THERETO, AS DEPICTED ON THAT CERTAIN ALTA/ASCM LAND TITLE SURVEY MAP PREPARED BY JOEL C. VIETTI, LAND SURVEYOR, WITH WEBSTER, MCGRATH & AHLBERG LTD., DATED JUNE 5, 2007, LAST REVISED ON JULY 10, 2007;

(B) TWO 10-FOOT WIDE STORM SEWER EASEMENTS AND DETENTION AND DRAINAGE EASEMENT OVER THOSE PORTIONS OF THE LAND, AS DESCRIBED ON EXHIBITS D-5 AND D-6 ATTACHED THERETO, AS ARE NECESSARY TO USE AND MAINTAIN THE STORM SEWERS, DRAINAGE DITCHES AND RETENTION POND AS SHOWN ON THAT CERTAIN ALTA/ASCM LAND TITLE SURVEY MAP PREPARED BY JOEL C. VIETTI, LAND SURVEYOR, WITH WEBSTER, MCGRATH & AHLBERG LTD., DATED JUNE 5, 2007, LAST REVISED ON JULY 10, 2007;

(C) WATER MAIN EASEMENTS UNDER AND THROUGH THOSE PORTIONS OF THE LAND, DESCRIBED ON EXHIBITS D-1, D-2 AND D-3 ATTACHED THERETO FOR THE MAINTENANCE OF CERTAIN WATER LINES TO BE LOCATED UNDERGROUND FOR THE PURPOSE OF SERVING THE LAND WITH WATER FOR DRINKING AND FOR SPRINKLING SYSTEMS, AS SHOWN ON THAT CERTAIN ALTA/ASCM LAND TITLE SURVEY MAP PREPARED BY JOEL C. VIETTI, LAND SURVEYOR, WITH WEBSTER, MCGRATH & AHLBERG LTD., DATED JUNE 5, 2007, LAST REVISED ON JULY 10, 2007.

(D) A PERPETUAL, NONEXCLUSIVE EASEMENT TO ERECT SIGNS OR HAVE A BUSINESS NAME, LOGO OR TRADEMARK ON WHATEVER SIGNS ARE MAINTAINED BY OLD RIVER, LLC, ITS SUCCESSORS AND ASSIGNS, AT THE ENTRY TO THE PARCEL OWNED BY OLD RIVER, ITS SUCCESSORS AND ASSIGNS,

(D) A PERPETUAL, NON-EXCLUSIVE EASEMENT ON, OVER AND THROUGH THE LAND CONTAINED IN THE ACCESS EASEMENT DESCRIBED ABOVE, ONE AT A POINT APPROXIMATELY 915 FEET TO THE WEST OF RIVER ROAD, AND THE OTHER APPROXIMATELY 40 FEET TO THE SOUTH OF SUCH POINT, FOR THE PURPOSES OF ERECTING AND MAINTAINING TWO (2) SIGNS.

Includes Building Address: None. (Access/Drainage/Sign Easements)

UNOFFICIAL COPY

1501-1555 Pratt Avenue (Tax ID # 08-34-401-017-0000)

LOT 275 (EXCEPT THE WEST 141.95 FEET THEREOF) IN CENTEX INDUSTRIAL PARK, UNIT NO. 156, BEING A SUBDIVISION IN SECTION 34, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED RECORDED SEPTEMBER 15, 1971 AS DOCUMENT 21622688, IN COOK COUNTY, ILLINOIS.

Includes Building Address: 1501-1555 Pratt Avenue
Elk Grove Village, IL 60007

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Fargo (Tax ID # 08-27-303-068-0000)

ALL OF LOT 362 IN CENTEX INDUSTRIAL PARK UNIT 218, BEING A SUBDIVISION IN SECTION 27, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SUBDIVISION RECORDED AUGUST 26, 1977 AS DOCUMENT 24075358, IN COOK COUNTY, ILLINOIS.

Includes Building Address: 951 Fargo Avenue
Elk Grove Village, IL 60007

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mt. Prospect (Tax ID # 12-19-300-007-0000)

THE NORTH 445 FEET (EXCEPT THE EAST 200 FEET THEREOF AND EXCEPT THE WEST 33 FEET THEREOF) OF THE SOUTHWEST FRACTIONAL 1/4 OF FRACTIONAL SECTION 19, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Includes Building Address: 3501 West Mount Prospect Road
Franklin Park, IL 60131

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Business Center Drive (Tax ID # 03-35-200-040-0000 and 03-35-200-041-0000)

ALL OF LOTS 604 AND 605 IN KENSINGTON CENTER-RESUBDIVISION NINETEEN, BEING A SUBDIVISION OF LOT 601 IN KENSINGTON CENTER-PHASE SIX, IN PART OF THE NORTH 1/2 OF SECTION 35, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS PER PLAT FILED JULY 31, 1986 AS LR3536485, AND RECORDED AUGUST 1, 1986 AS DOCUMENT 86329077, IN COOK COUNTY, ILLINOIS.

Includes Building Address: 1471 E. Business Center Drive
Mount Prospect, IL 60056

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Marshall (Tax ID # 008-25-200-009-0000)

ALL OF LOT 2 IN INTERCONTINENTAL INDUSTRIAL SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF DES PLAINES, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 31, 1963 AS DOCUMENT 19011027, IN COOK COUNTY, ILLINOIS.

Includes Building Address: 1723 Marshall Drive
Des Plaines, IL 60016-1801

Property of Cook County Clerk's Office

ACCOMMODATION RECORDING ONLY