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## SECOND AMENDED OPTION AGREEMENT

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THIS SECOND AMENDED OPTION AGREEMENT entered into this 7<sup>th</sup> day of December, 1988, by and between BOARD OF PUBLICATION OF THE METHODIST CHURCH, an Illinois corporation (hereinafter referred to as "Owner"), and PHILIP I. MAPPA and COLIN A. REGAN or their nominee (collectively hereinafter referred to as "Optionee").

### WITNESSETH:

WHEREAS, the Owner is the owner in fee simple of certain real estate in the County of Cook, State of Illinois, comprising approximately 12½ acres, more or less (hereinafter referred to as the "Property"), and legally described as follows:

Lot 1 in the Methodist Publishing House Resubdivision of parts of Lots 6 and 7 in Garland Estate Division of Lands in Sections 16 and 21, Township 41 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois;

and

WHEREAS, Optionee is desirous of purchasing the Property and has previously entered into an Option Agreement dated April 10, 1987 (the "Option Agreement"), conditioned upon the rezoning of the Property by the City of Park Ridge, Illinois; and

WHEREAS, the Option Agreement has previously been extended by mutual agreement of the parties and the rezoning has been accomplished; and

WHEREAS, the Property and certain other property have been subjected to a planned unit development the plan for which is attached hereto as Exhibit A and incorporated herein by reference (the "Plan"); and

WHEREAS, the Plan provides for Parcels A through G approximately as shown on Exhibit A (said Parcels are hereinafter referred to individually by name except that (i) the portion of Parcel D outlined in red on Exhibit A is hereinafter referred to as the "First Garage Parcel" being more particularly described in Exhibit B attached hereto and incorporated herein by reference, (ii) the balance of Parcel D not so outlined is hereinafter referred to as the "Second Garage Parcel," and (iii) Parcel E is sometimes hereinafter referred to as the "Common Area Parcel"); and

WHEREAS, Optionee intends to construct a parking garage and surface parking on both the First Garage Parcel and the

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Second Garage Parcel (such parking facilities being hereinafter respectively referred to as the "Phase I Parking Facilities" and the "Phase II Parking Facilities") pursuant to Development Plans to be approved by Owner pursuant to Paragraph 6 below; and

WHEREAS, the parties have agreed that subdivision plat (the "Plat") may need to be prepared at Optionee's expense and submitted to the City of Park Ridge, Illinois (the "City") to obtain approval of the division of the Property into three (3) separate lots consisting of (i) the First Garage Parcel, (ii) that portion of the Property described on Exhibit C and incorporated herein by this reference (being all of Parcel A and part of Parcel E and hereinafter referred to as the "Phase I" and (iii) the balance of the Property not included in the First Garage Parcel on the Phase I; and

WHEREAS, the Option Agreement was amended in its entirety with an Amended Option Agreement dated as of June 30, 1988 (the "Amended Option Agreement"); and

WHEREAS, the parties desire to amend the Amended Option Agreement in its entirety with this Second Amended Option Agreement to reflect certain agreements of the parties regarding the acquisition and development of the Property.

NOW, THEREFORE, for and in consideration of the mutual promises hereinafter contained, the sufficiency of which is hereby severally acknowledged, the parties hereto do hereby agree as follows:

1. GRANT OF OPTION.

The Owner hereby confirms that it has extended and granted to the Optionee, the sole and exclusive option to acquire Phases I, II and III of the Property as shown on the Plan upon the terms and conditions provided herein (the "Option").

2. EXERCISE OF OPTION.

Owner hereby confirms that Optionee has exercised its option to purchase the Property on the terms and conditions set forth in the Amended Option Agreement, thereby obligating Optionee to purchase Phases I, II and III of the Property, as set forth in the Amended Option Agreement.

Phase I is substantially the same as Phase I, and Phases II and III are substantially the same as Parcels B and C shown on the Plan and, upon execution of this Second Amended Option Agreement, any prior reference or agreement regarding Phases I, II or III shall mean Phase I and Parcels B or C, as the case may be.

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Philip I. Mappa and Colin A. Regan join herein for the purpose of jointly and severally guaranteeing the full payment of the Option price set forth below (including the premiums set forth below), should Optionee fail to close the purchase of Phase I or Parcels B and C in accordance herewith.

### 3. TERMS OF OPTION CONTRACT.

The terms for the purchase of Phase I and Parcels B and C of the Property are as follows:

(a) Purchase price: Optionee shall purchase Phase I and Parcels B and C for the price of \$4,100,000.00, adjusted as set forth below:

(i) The purchase price for Phase I shall be One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00), plus a premium of ten percent (10%) per annum on said amount for the period commencing on October 18, 1988, and ending on the closing date for the Phase I.

(ii) The purchase price for Parcel B and Parcel C shall be One Million Three Hundred Fifty Thousand and No/100 Dollars (\$1,350,000.00) each, plus a premium calculated by multiplying the Variable Rate (as hereinafter defined) by the purchase price of each such Parcel, without compounding, for each year or portion thereof commencing on October 18, 1988 and ending on the date that the sale of each such Parcel is closed. The amount of premium due will be calculated quarterly at the last business day of each quarter following the Phase I closing. The premium shall be prorated for fractions of a quarter using the date of closing for such Parcel as the date for calculation of the Variable Rate. After closing of Parcel B, such premium shall be calculated on \$1,350,000.00. As used herein, the "Variable Rate" means an interest rate equal to one percentage point in excess of the average Prime Rate of Third National Bank in Nashville (or that of its successor) for each quarter, or portion thereof, following the closing date of the Phase I.

(iii) The First Garage Parcel shall be conveyed to Optionee without charge at the

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closing of Phase I, subject to the terms and conditions of Owner's option to repurchase described in Paragraph 3(d) below.

(iv) The Second Garage Parcel shall be conveyed to Optionee without charge at the closing of Parcel B, subject to the terms and conditions of the option to repurchase described in Paragraph 3(e) below.

(v) After conveyance of the First Garage Parcel and the Second Garage Parcel, respectively, such Parcels shall be used only for parking purposes and such other purposes as may be incidental thereto, with all parking facilities being constructed upon such Parcels pursuant to Development Plans which have been approved by Owner.

(b) Closing date:

(i) Phase I and First Garage Parcel. On or before December 14, 1988. At closing of Phase I, Owner shall grant Optionee a fifty (50) foot non-exclusive easement across the Property for ingress and egress to Phase I to be located as shown on the drawing attached hereto as Exhibit C and incorporated herein by this reference, subject to relocation in Owner's reasonable discretion. Such easement shall automatically be extinguished, null and void upon completion of construction of the roads servicing Phase I to be shown on the Development Plan, as hereinafter defined.

(ii) Parcel B and Second Garage Parcel. On or before October 18, 1990.

(iii) Parcel C. On or before October 18, 1992. At closing of Parcel C, Optionee and Owner shall convey all common areas (including, without limitation, all curb cuts and roadways) to the owners' association to be established pursuant to the declaration of restrictive covenants substantially as described in Paragraph 6(b) below.

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(c) Title subject to the following:

(i) All taxes and special assessments levied or confirmed after execution of the Option Agreement.

(ii) Building restrictions of record and building lines as set forth in Chicago Title Insurance Company Commitment for Title Insurance No. 70-56-011, dated September 16, 1988.

(iii) Conditions and covenants of record as to use and occupancy, zoning laws and ordinances, easements for public utilities as set forth in Chicago Title Insurance Company Commitment for Title Insurance No. 70-56-011, dated September 16, 1988.

(iv) Acts of the Optionee.

(d) Owner Option to Repurchase First Garage Parcel: At closing of Phase I and prior to recordation of any financing instruments for Phase I, Optionee shall grant to Owner the exclusive right to acquire the First Garage Parcel for a total consideration of One and No/100 Dollars (\$1.00) with such option being effective and subject to exercise by Owner only if Optionee shall fail to construct the Phase I Parking Facilities within three (3) years from the date of closing of Phase I. Such option shall provide that Owner shall not be entitled to exercise its option unless and until Owner provides the Optionee with assurance, reasonably acceptable to Optionee, that Owner is prepared to and will promptly proceed to construct the Phase I Parking Facilities. If Owner repurchases the First Garage Parcel, the First Garage Parcel shall be used only for parking purposes or for such other purpose as may be incidental thereto.

(e) Owner Option to Repurchase Second Garage Parcel: At closing of Parcel B and prior to recordation of any financing instruments for such Parcel, Optionee shall grant to Owner the exclusive right to acquire the Second Garage Parcel for a total consideration of One and No/100 Dollars (\$1.00) with such option being effective and subject to exercise by Owner only if Optionee shall fail to construct Parcel B within three (3) years from the date of closing of Parcel B. Such option shall provide that Owner shall not be entitled to exercise its option unless and until Owner

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provides the Optionee with assurance, reasonably acceptable to Optionee, that Owner is prepared to and will promptly proceed to construct the Parcel B. If Owner repurchases the Second Garage Parcel, the Second Garage Parcel shall be used only for parking purposes or for such other purpose as may be incidental thereto.

(f) Owner Rights to Use Parking Facilities:

After Optionee acquires Phase I and Parcels B and C, Owner shall have no right to use either the Phase I or the Phase II Parking Facilities, and the options described in Paragraphs 3(d) and (e) shall automatically terminate.

(g) Parking Rights After Repurchase: If Owner shall exercise its rights to repurchase either of Garage Parcels and shall construct either the Phase I or the Phase II Parking Facilities, or both, notwithstanding anything contained to the contrary in the Declaration, Optionee shall have no right to use such facilities unless and until Optionee pays to Owner one-third (1/3) of the cost of constructing such facilities including applicable carrying costs. Upon such payment, Owner shall grant a nonexclusive easement to Optionee to use and enjoy such parking facilities, with full right of ingress and egress thereto, unless at the time of such payment the parking facilities have been conveyed to an owner's association with full right by the members thereof to use such parking facilities.

(h) Optionee Maintenance Obligations: Notwithstanding anything contained in the Declaration, Optionee shall, after closing of Phase I, be solely responsible for maintenance of all common areas shown on the Development Plan and for all obligations of Optionee as an "Owner" of Parcels B and C under the Declaration, including, without limitation, all maintenance of such Parcels and all assessments payable to the Owners Association, if any; provided, however, Optionee's obligations under this Paragraph 3(h) shall terminate with respect to any Parcel which Owner shall sell to an unrelated third party with such third party assuming the full obligations under the Declaration as Owner of such Parcel.

#### 4. TITLE INSURANCE.

Owner has furnished to Optionee Chicago Title Insurance Company Commitment for Title Insurance No. 70-56-011, dated September 16, 1988 (the "Commitment"). Within fifteen (15) days of each closing date, Owner shall furnish an updated commitment

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covering the Parcel to be purchased. If, when said updated commitment is furnished as herein provided, defects in title are disclosed other than the matters to which this Option is subject by the terms hereof and the matters shown on the Commitment, Owner shall have, upon written notice from Optionee, thirty (30) days thereafter in which to cure said defects and to furnish at such later date an updated commitment showing such defects cured or removed. If such defects in title are not cured within thirty (30) days after notice as hereinbefore provided, Optionee shall take the title as it then exists (with the right to deduct from the purchase price liens or encumbrances of a definite or ascertainable amount). Optionee acknowledges that it has received an updated commitment with respect to Phase I and hereby approves the state of title to Phase I as shown on such updated commitment.

Notwithstanding that a portion of the Property is or has been registered under the Torrens System, Owner shall be required to furnish Optionee with a title insurance policy issued by Chicago Title Insurance Company.

## 5. TAXES AND PRORATIONS.

Optionee acknowledges that the Property is tax-exempt in the hands of Owner, and that any tax liability that may accrue against the Property after closing shall be the sole responsibility of Optionee. Prorations of such other items as are customarily prorated shall be prorated as of the date of closing.

## 6. DEVELOPMENT OF PROPERTY

(a) Prior to commencement of construction of improvements on Phase I and on Parcels B and C, Optionee shall submit, for Owner's review and approval, final plans for the development of the Property (the "Development Plans") which plans shall include, but not be limited to, water retention, the Phase I and Phase II Parking Facilities, roads, detention facilities, utilities, landscaping, and such other matters as may be required by Owner or the City of Park Ridge, Illinois.

(b) Planned Unit Development Documentation. Prior to closing, if necessary, the Plat shall have been prepared and approved by the City, along with a declaration of restrictive covenants (the "Declaration") for the Property addressing, but not limited to, the following issues: formation of an owners' association for the Property prior to commencement of construction of the proposed office building on Parcel A, reciprocal easement rights across the Property between Owner and Optionee and conveyance to such Owners' Association by Owner and Optionee of the common areas in the development to be accomplished when Optionee closes its purchase of Parcel C.

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(c) Optionee Authority. Either in the Declaration or by separate instrument, Owner shall authorize Optionee, its agents and contractors, to enter upon portions of the Property still owned by Owner for the purpose of constructing and installing the roads, utilities, landscaping, detention facilities and other matters shown on the Development Plans.

(d) Amendment of Development Plans. The Development Plans shall not be materially modified or changed unless Owner has approved such modifications or changes in writing.

## 7. REZONING CONTINGENCY.

Optionee has filed an application with the City for the purpose of rezoning the Property, which has been modified and approved. Owner agrees to cooperate with Optionee in obtaining approval of the Plat, if necessary, and to sign such documentation as is necessary to achieve such rezoning and to subdivide the Property.

## 8. INSPECTION/ASBESTOS REMOVAL.

The Owner hereby grants the Optionee the right to go upon the Property from time to time during the option period for the sole and exclusive purpose of allowing Optionee to conduct soil, engineering and other tests on the Property. The Optionee shall indemnify and hold the Owner harmless from any and all damages caused by the Optionee or its agents to the Property. The Optionee shall be responsible for any hazards created through its conduct on the Property. After performing its tests and engineering work, the Optionee shall restore the Property to substantially the same condition as existed prior to the Optionee's conduct thereon. The Optionee shall indemnify and hold the Owner harmless from any and all mechanic's, materialmen's, laborer's or other liens arising out of its activity on the Property. The rights under this paragraph shall be limited to performing soil tests, engineering and other tests by the Optionee and shall automatically terminate and be of no further force and effect after the expiration of the option period or when such tests have been completed, whichever shall occur first.

Owner acknowledges that the Optionee's inspection of the Property revealed the presence of asbestos in a building currently located on the Property. As an inducement to Owner to agree to the amended purchase terms set forth in this Second Amended Option Agreement, Optionees agree to remove from the Property such asbestos and any other hazardous material which may be subsequently discovered in such building. Such removal shall be accomplished prior to demolition of such building and shall be carried out and completed by a qualified asbestos abatement

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contractor approved by Owner prior to commencement of work. The removal and disposal of asbestos shall be undertaken in a safe and controlled manner in compliance with all applicable statutes, rules and regulations including, without limitation, regulations and guidelines of the United States and Illinois Environmental Protection Agencies. The Optionee shall indemnify Owner, at Owner's option defend, and hold Owner harmless from and against any loss, claim, liability or expense (including, without limitation, reasonable attorneys' fees and court costs) incurred by Owner as a result of or in any way connected with the removal and/or disposal of such asbestos and other materials.

## 9. FINANCING CONTINGENCY.

The Amended Option Agreement contained a contingency for Optionee's ability to arrange for financing for the development of the Property and any improvements to be made elsewhere on the Property by Optionee. Optionee hereby waives said contingency.

## 10. STATUS REPORTS.

Optionee shall provide Owner with status reports at intervals of approximately ninety (90) days. Optionee shall submit to Owner with each status report copies of all testing, engineering and architectural reports. In the event Optionee does not exercise the Option, all reports, soil tests, plans and traffic studies prepared by or on behalf of Optionee for rezoning shall be delivered to Owner.

## 11. ASSIGNMENT.

The Optionee shall not assign this Second Amended Option Agreement or any right or interest hereunder without the prior written consent and approval of Owner. At the closing, however, Optionee may take title to the Property in the name of a nominee to be designated at such time.

## 12. ESCROW.

Within fifteen (15) days from the date of this Second Amended Option Agreement, either party may request an escrow to be established with Chicago Title and Trust Company, in accordance with the general provisions of a deed and money escrow then furnished and in use by Chicago Title and Trust Company, with such provisions inserted in said Escrow Agreement as may be required to conform to the provisions of this Second Amended Option Agreement. Upon the creation of such an escrow, all deposits of money and the conveyance called for herein to Optionee shall be made through said escrow and the costs of the escrow shall be borne equally by Optionee and Owner.

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## 13. DEFAULT.

If Optionee fails to make any of the payments or any part thereof, or perform any of the covenants herein on Optionee's part hereby made and entered into, after notice and expiration of time to cure, Owner may elect to terminate this Agreement and recover from Optionee any damages suffered by reason of such failure, together with reasonable attorney's fees and court costs, in which event Optionee's interest or rights in any portion of the Property shall thereupon terminate, or, alternatively, Owner may accelerate the purchase of any Parcels not then purchased by Optionee, and enforce the specific performance of this Agreement and may recover from Optionee any damages suffered by reason of any default on the part of Optionee, together with reasonable attorney's fees and court costs. Notwithstanding the foregoing, nothing herein shall be deemed to limit in any way Owner's right to collect from the guarantors unpaid portions of the purchase price (in the event of specific performance) or other damages suffered by reason of Optionee's actions.

In the event of any default, breach or violation by Optionee in any way of the provisions hereof, Owner shall give Optionee a thirty (30) day written notice thereof, and of Owner's intention to exercise its remedies set forth above, provided, however, that Optionee shall have the right to cure any default, breach or violation within said thirty (30) day period.

In the event of a default by Owner in its performance of any of the terms and conditions of this Option, which default has not been cured by Owner within thirty (30) days after written notice of Optionee, Optionee may elect to terminate this Agreement, or enforce the specific performance of this Agreement, or at its election may recover from Owner any damages suffered by reason of any default on the part of Owner, together with reasonable attorney's fees, or pursue such other legal or equitable remedies as may be available to Optionee.

## 14. NOTICES.

Any notice which may be required hereunder or which either party is permitted or may desire to give to the other party or to the escrow holder shall be in writing and may be given by personal delivery or by mailing the same by registered or certified mail, return receipt requested, to the party to whom the notice is directed at the address of such party as hereinafter set forth, or such other address as the parties may hereinafter designate:

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## FIRST GARAGE PARCEL

THAT PART OF LOT ONE IN METHODIST PUBLISHING HOUSE RESUBDIVISION OF PARTS OF LOTS 6 AND 7 IN GARLAND ESTATE DIVISION OF LANDS IN SECTIONS 16 AND 21, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED JUNE 12, 1961 AS DOCUMENT NO. 18185502 IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID RESUBDIVISION; THENCE SOUTH  $0^{\circ}01'40''$  EAST ALONG THE EAST LINE OF SAID RESUBDIVISION ALSO BEING THE WEST LINE OF LUNDERGAN AVENUE, 343.61 FEET; THENCE WEST ALONG A LINE NORMAL TO THE LAST DESCRIBED COURSE, 68.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH  $89^{\circ}58'20''$  WEST 125.00 FEET; THENCE SOUTH  $0^{\circ}01'40''$  EAST, 265.00 FEET; THENCE NORTH  $89^{\circ}58'20''$  EAST, 125.00 FEET; THENCE NORTH  $0^{\circ}01'40''$  WEST, 265.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.76 ACRES MORE OR LESS.

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Property Address: 1661 N. Northwest Hwy.  
Park Ridge IL

PIN: 09-21-202-014-0000

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**UNOFFICIAL COPY**"Phase I Description"

THAT PART OF LOT ONE IN METHODIST PUBLISHING HOUSE RESUBDIVISION OF PARTS OF LOTS 6 AND 7 IN GARLAND ESTATE DIVISION OF LANDS IN SECTIONS 16 AND 21, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED JUNE 12, 1961 AS DOCUMENT NO. 18185502 IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID RESUBDIVISION; THENCE SOUTH  $0^{\circ}01'40''$  EAST ALONG THE EAST LINE OF SAID RESUBDIVISION ALSO BEING THE WEST LINE OF LUNDERGAN AVENUE, 343.61 FEET; THENCE SOUTH  $89^{\circ}58'20''$  WEST, 414.47 FEET; THENCE NORTH  $43^{\circ}23'30''$  WEST, 163.52 FEET; THENCE NORTH  $46^{\circ}36'30''$  EAST ALONG THE NORTH LINE OF SAID RESUBDIVISION, 205.77 FEET; THENCE NORTH  $77^{\circ}29'50''$  EAST ALONG THE NORTH LINE OF SAID RESUBDIVISION, 386.27 TO THE POINT OF BEGINNING, CONTAINING 3.11 ACRES, MORE OR LESS.

THAT PART OF LOT ONE IN METHODIST PUBLISHING HOUSE RESUBDIVISION OF PARTS OF LOTS 6 AND 7 IN GARLAND ESTATE DIVISION OF LANDS IN SECTIONS 16 AND 21, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED JUNE 12, 1961 AS DOCUMENT NO. 18185502 IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID RESUBDIVISION; THENCE SOUTH  $0^{\circ}01'40''$  EAST ALONG THE EAST LINE OF SAID RESUBDIVISION ALSO BEING THE WEST LINE OF LUNDERGAN AVENUE, 343.61 FEET; THENCE WEST ALONG A LINE NORMAL TO THE LAST DESCRIBED COURSE, 68.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH  $89^{\circ}58'20''$  WEST 125.00 FEET; THENCE SOUTH  $0^{\circ}01'40''$  EAST, 265.00 FEET; THENCE NORTH  $89^{\circ}58'20''$  EAST, 125.00 FEET; THENCE NORTH  $0^{\circ}01'40''$  WEST, 265.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.76 ACRES MORE OR LESS.

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