

UNOFFICIAL COPY

8 8 3 1 5 5 9 3

88315593

SECOND MODIFICATION AGREEMENT

THIS SECOND MODIFICATION AGREEMENT made as of May 1, 1988, by and among FCA AMERICAN MORTGAGE CORPORATION (the "Lender"), a California corporation, with an office at 343 East Main Street, Stockton, California 95202, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO (the "Trustee"), a national banking association, not personally but solely as Trustee under the provisions of a certain Trust Agreement dated June 18, 1981 and known as Trust No. 52947 (the "Trust") and NORTH LOOP TRANSPORTATION CENTER LIMITED PARTNERSHIP (the "Partnership"), and Illinois limited partnership with an office at 208 South LaSalle Street, Suite 1630, Chicago, Illinois. The Trustee and the Partnership are hereinafter collectively referred to as the "Borrower".

RECITAL

Lender, the Partnership and the Trustee entered into Loan Agreement (the "Loan Agreement") dated June 26, 1984, which provides, among other things, that upon satisfaction of certain conditions Lender will make, and Borrower will accept, a loan (the "Loan") of Forty-Four Million and 00/100 (\$44,000,000) Dollars.

PERMANENT INDEX NUMBER:

14-09-420-044 (LOT 27)

208 S. LA SALLE ST. CHICAGO, ILL. 60606
203 N. LA SALLE ST. CHICAGO, ILL. 60606

6972583 & 7169775-02

88315593

UNOFFICIAL COPY

8 8 3 1 5 5 9 3

The Loan closed on December 6, 1984. The Loan was evidenced by a Promissory Note (the "Note"), dated December 12, 1984, in the original principal amount of \$44,000,000 made by Trustee to Lender. The Loan is secured by (i) a Mortgage, Assignment of Rents and Security Agreement (the "Mortgage"), dated December 6, 1984, made by Trustee to Lender recorded as Document No. 27377737 in the records of Cook County, Illinois covering the real property described in Schedule A hereto together with all improvements located thereon, (ii) an Assignment of Leases (the "Assignment of Leases"), dated December 6, 1984, made by Borrower to Lender recorded as Document No. 27377739 in the records of Cook County, Illinois, (iii) a Security Agreement and Assignment of Interest in Land Trust (the "Assignment of Beneficial Interest"), dated December 6, 1984, made by the Partnership to Lender assigning the beneficial interest in the Trust, (iv) a Security Agreement (the "Security Agreement"), dated December 6, 1984, made by Borrower to Lender, and (v) an Assignment of Contract Documents (the "Assignment of Contracts"), dated December 6, 1984, made by Borrower to Lender recorded as Document No. 27377738 in the records of Cook County, Illinois.

At the request of the Partnership the Loan was restructured and Borrower and Lender entered into a Loan Restructuring Agreement (the "Restructuring Agreement"), dated May 1, 1986, which modified the terms of payment of the Note. In accordance with the Restructuring Agreement the Trustee executed

88315593

(i) a Modification of Promissory Note (the "First Note Modification"), dated May 1, 1986, and (ii) a Modification of Mortgage, Assignment of Rents and Security Agreement (the "First Mortgage Modification"), dated May 1, 1986, and recorded as Document No. 86385553 in the records of Cook County, Illinois.

At the request of the Partnership the Loan was again restructured and Trustee executed and delivered to Lender an amended and restated note (the "Restated Note") dated as of January 1, 1987 which, among other things, modified the interest payments and provided for the accrual of interest. In addition, the Trustee, Partnership and Lender entered into a Modification Agreement (the "Modification Agreement") dated as of January 1, 1987 and recorded as Document No. 87167010 in the records of Cook County, Illinois which modified the Loan Agreement, Mortgage, the Assignment of Leases, the Assignment of Beneficial Interest, the Security Agreement and the Assignment of Contracts (collectively, the "Security Documents"). The Modification Agreement provided, among other things, that the Security Documents continued to secure the indebtedness evidenced by the Restated Note.

Myron C. Warshauer, Ruvir Corporation and Richard A. Stein executed and delivered to Lender a Guaranty of Payment (the "Guaranty"), dated as of January 1, 1987, which provided among other things, that each, jointly and severally, guaranteed payment of certain amounts secured by the Security Documents, as modified by the Modification Agreement, up to \$1,000,000.

86385553

UNOFFICIAL COPY

8 8 3 1 5 5 9 3

In addition, the Partnership, Trustee and Lender entered into a Yield Protection Agreement (the "Yield Protection Agreement") dated as of January 1, 1987 which provides that, in order to preserve the original yield contemplated by the Note, the Partnership and Trustee shall pay to Lender, from insurance proceeds, condemnation award, the proceeds of sale and proceeds of each refinancing, the Additional Interest as defined in the Yield Protection Agreement, but in no event to exceed 30% of the Partnership's equity determined as of the date of the first such transaction. Lender and the Partnership entered into a Subordinate Assignment of Beneficial Interest (the "Subordinate Assignment of Beneficial Interest"), dated as of March 30, 1987, wherein the Partnership assigned its beneficial interest under a land trust with Trustee, known as Trust No. 52947, as security for the payment and performance of the Partnership's obligations under the Yield Protection Agreement. The Trustee granted to Lender a Performance Mortgage, Assignment of Rents and Security Agreement (the "Performance Mortgage"), dated as of January 1, 1987, recorded as Document No. 86177011 in the records of Cook County, Illinois, to secure the obligations of the Trustee and the Partnership under the Yield Protection Agreement.

Borrower and Lender entered into several Letter Agreements (the "Letter Agreements"), dated March 4, 1988, March 18, 1988, May 5, 1988, and May 27, 1988, which, among other things, modified the terms of payment of the Restated Note.

88315597

UNOFFICIAL COPY

8 8 3 1 5 5 9 3

The Partnership has again requested that Lender restructure the Loan and, as a result of such request Trustee has executed a second amended and restated note (the "Second Amended and Restated Note") of even date herewith, which, among other things modifies interest payments and establishes a shortfall account into which portions of the net operating income shall be deposited as a reserve for subsequent interest payments as more fully provided in the Second Amended and Restated Note. Borrower shall execute this Second Modification Agreement which modifies certain terms and provisions of the Loan Agreement, Mortgage, as modified by the First Mortgage Modification, the Assignment of Leases, the Assignment of Beneficial Interest, the Assignment of Contracts and the Security Agreement, as well as the Yield Protection Agreement, the Subordinate Assignment of Beneficial Interest, and the Performance Mortgage (collectively, the "Loan Documents").

NOW, THEREFORE, in consideration of the premises, the covenants contained herein and other good and valuable consideration, Lender and Borrower agree as follows:

1. Modification of Loan Agreement, as modified by the Modification Agreement.

(a) Section 1.06 shall be deleted in its entirety and the following inserted in its place:

1.06. Repayment. The Loan shall be repaid in accordance with the terms and provisions of that certain Second Amended and Restated Promissory Note, dated as of May 1, 1988, made by the Trust to order of Lender.

(b) Section 6.02 shall be amended by deleting the last sentence thereof and adding in lieu thereof the following sentence to the end thereof:

Notwithstanding anything to the contrary contained in this Section 6.02, Myron C. Warshauer, Ruvir Corporation and Richard A. Stein shall be and remain personally liable pursuant to the terms of the Guaranty of Payment dated as of January 1, 1987, as amended by the First Amendment to Guaranty of Payment, dated as of May 1, 1988.

2. Modification of Mortgage, as amended by the Modification Agreement.

(a) The Habendum Clause on page 3 of the Mortgage is deleted in its entirety and the following inserted in its place:

TO HAVE AND HOLD the same unto Lender, its successors and assigns forever, for the purpose of securing:

I. The payment of principal, interest and all other amounts evidenced by the Promissory Note (the "Original Note") dated December 12, 1984 in the principal sum of Forty-Four Million and 00/100 Dollars (\$44,000,000.00) made by Borrower to Lender, as amended by the Modification of Promissory Note (the "First Note Modification") dated May 1, 1986 made by the Borrower and as further amended and restated by the Amended and Restated Promissory Note (the "Restated Note") dated as of January 1, 1987 made by Borrower to the order of Lender, as amended by letter agreements dated March 4, 1988, March 18, 1988, May 5, 1988 and May 27, 1988 and as further amended and restated by the Second Amended and Restated Promissory Note (the "Second Restated Note") dated as of May 1, 1988 made by Borrower to the order of Lender. The balance of the unpaid principal, together with unpaid interest thereon,

88315593

shall be due and payable in full on December 31, 1994.

II. The payment and performance of all terms, covenants, conditions and provisions to be paid or performed by Borrower and North Loop Transportation Center Limited Partnership (the "Partnership"), an Illinois limited partnership, pursuant to (i) the Original Note as amended by the First Note Modification and as further amended and restated by the Restated Note and the Second Restated Note, (ii) the Mortgage, as amended by the Modification of Mortgage, Assignment of Rents and Security Agreement dated May 1, 1986 and recorded as Document No. 86385553 in the records of Cook County, Illinois, and as further amended by the Modification Agreement, dated as of January 1, 1987 and recorded as Document No. 87167010 in the records of Cook County, and as further amended by the Second Modification Agreement, dated as May 1, 1988 among Lender, Borrower and the Partnership (as hereinafter defined), to be recorded, (iii) the Assignment of Leases dated December 6, 1984 made by Borrower and the Partnership to Lender recorded as Document No. 27377739 in the records of Cook County, Illinois, (iv) the Assignment of Contract Documents dated December 6, 1984 made by Borrower and the Partnership to Lender recorded as Document No. 27377738 in the records of Cook County, Illinois, (v) the Security Agreement dated December 6, 1984 made by Borrower and the Partnership to Lender, and (vi) the Loan Agreement (the "Loan Agreement") between Borrower and the Partnership and Lender dated June 26, 1984 and all other documents executed or delivered in connection with the Loan evidenced by the Original Note.

III. The payment of all advances, costs, fees, expenses or other sums advanced or incurred by the Lender pursuant to the terms hereof or pursuant

Property of the Office

88315592

to the terms of any of the documents (the "Loan Documents") executed or delivered in connection with the Loan Agreement (the principal and interest and other sums due under the Original Note, as amended by the First Note Modification and as further amended and restated by the Restated Note and the Second Restated Note, and any advances, costs, fees, expenses or other sums advanced or incurred by the Lender pursuant to the terms of any of the Loan Documents, together with interest thereon, are hereinafter referred to as the "Indebtedness").

(b) For purposes of this Mortgage, the Original Note, as amended by the First Note Modification and as further amended by the Restated Note and the Second Restated Note shall hereinafter be referred to as the "Note".

(c) Paragraph 4.40 shall be amended by deleting the last sentence thereof and adding the following sentence to the end thereof:

Notwithstanding anything to the contrary contained in this Paragraph 4.40, Myron C. Warshauer, Ruvir Corporation and Richard A. Stein shall be and remain personally liable pursuant to the terms of that Guaranty of Payment dated as of January 1, 1987, as amended by the First Amendment of Guaranty of Payment, dated as of May 1, 1988.

4. Modification of Assignment of Leases, as amended by the Modification Agreement.

(a) Paragraphs 1(a), 1(b) and 1(c) are hereby deleted in their entirety and the following inserted in their place:

(1) Payment of the principal amount and all interest evidenced by that certain Promissory Note dated December 12, 1984 in the original principal amount of \$44,000,000

88315597

made by Trustee to Lender, as amended by the Modification of Promissory Note, dated May 1, 1986, made by Trustee, and as further amended and restated by that certain Amended and Restated Promissory Note, dated as of January 1, 1987, made by Trustee to Lender as further amended and restated by that certain Amended and Restated Promissory Note (the "Second Restated Note"), dated as of May 1, 1988 made by Trustee to Lender. The Promissory Note as so amended, is hereinafter referred to as the "Note" and any further extensions, modifications or renewals thereof.

(2) Payment and performance of all covenants, conditions, terms and provisions contained in the Loan Documents.

(3) For purposes of this Assignment of Leases the term "Loan Documents" shall mean (i) the Note, (ii) the Mortgage, Assignment of Rents and Security Agreement dated December 6, 1984 made by Trustee to Lender recorded as Document No. 27377737 in the records of Cook County, Illinois, as amended by the Modification of Mortgage, Assignment of Rents and Security Agreement dated May 1, 1986 recorded as Document No. 86385553 in the records of Cook County, Illinois as further amended by the Modification Agreement dated as of January 1, 1987 made by Trustee to Lender recorded as Document No. 36167010 in the records of Cook County, Illinois (the "Modification Agreement") and the Second Modification Agreement (the "Second Modification Agreement") dated as of May 1, 1988 among Trustee, Lender and the Partnership (the Mortgage, the Modification of Mortgage, the Modification Agreement and the Second Modification Agreement are hereinafter collectively referred to as the "Mortgage"), (iii) the Security Agreement and Assignment of Interest and Land Trust made by the Partnership to Lender as modified by the Modification Agreement and the Second Modification Agreement, (iv) the Assignment of Contract Documents dated December 6, 1984 made by the Trustee and the Partnership to Lender recorded as Document No. 27377738 in the records of Cook County, Illinois as modified by the Modification Agreement and

88315593

the Second Modification Agreement, and (v) the Security Agreement dated December 6, 1984 made by the Partnership and Trustee to Lender as modified by the Modification Agreement and the Second Modification Agreement.

(b) Paragraph 21 shall be amended by deleting the last sentence and inserting the following in its entirety:

Notwithstanding anything to the contrary contained in this Paragraph 21, Myron C. Warshauer, Ruvir Corporation and Richard A. Stein shall be and remain personally liable pursuant to the terms of that certain Guaranty of Payment dated January 1, 1987, as amended by the First Amendment to Guaranty of Payment dated as of May 1, 1988.

5. Modification of Assignment of Contracts, as amended by the Modification Agreement.

(a) The first paragraph following "WITNESSETH" shall be deleted in its entirety and the following inserted in its place:

To secure to Lender payment of all principal and interest under the Note and payment and performance of all obligations under the Loan Documents Borrower hereby grants a security interest in, transfers and assigns to Lender all of Borrower's right, title and interest in and to all contracts, agreements and other documents including but not limited to those more particularly described on Exhibit "A" attached hereto and made a part hereof, together with any additions, changes, extensions, revisions or modifications of such contracts, agreements and documents (all of the foregoing hereinafter collectively referred to as the "Contract Documents"), now or hereafter executed in connection with Borrower's interest in that certain tract of land together with improvements thereon, lying and being in Cook County, Illinois and being more particularly described on Exhibit "B" attached hereto and made a part hereof

88315593

(hereinafter, together with the improvements thereon, referred to as the Project) it being the intention hereby to establish an absolute transfer and assignment of all of said Contract Documents and the avails thereof to Lender. The term "Note" as used herein shall mean the Promissory Note dated December 12, 1984 in the original principal amount of \$44,000,000 made by Trustee to Lender, as modified by that Certain Modification of Promissory Note dated May 1, 1986 made by Trustee, as further amended and restated by (i) that certain Amended and Restated Promissory Note made by Trustee to order of Lender dated January 1, 1987, and (ii) that Second Amended and Restated Promissory Note made by Trustee to order of Lender dated as of May 1, 1988. The term "Loan Documents" as used herein shall mean (i) the Note, (ii) the Mortgage, Assignment of Rents and Security Agreement, dated December 6, 1984, made by Trustee to Lender recorded as Document No. 27377737 in the records of Cook County, Illinois as modified by the Modification of Mortgage, Assignment of Rents and Security Agreement dated May 1, 1986 made by Trustee and recorded as Document No. 86385553 in the records of Cook County, Illinois, (iii) the Security Agreement and Assignment of Interest and Land Trust dated December 6, 1984 made by the Partnership to Lender, (iv) the Assignment of Rents and Leases dated December 6, 1984 made by Borrower to Lender recorded as Document No. 27477739 in the records of Cook County, Illinois, (v) the Assignment of Contract Documents dated December 6, 1984 made by Borrower to Lender recorded as Document No. 27377738 in the records of Cook County, Illinois, (vi) the Security Agreement dated December 6, 1984 made by Borrower to Lender, (vii) the Loan Agreement dated June 26, 1984 between Borrower and Lender, (viii) the Loan Restructuring Agreement dated May 1, 1986 between Borrower and Lender, (ix) the Modification Agreement dated January 1, 1987 between Borrower and Lender recorded as Document No. 86167010 in the records of Cook County, Illinois, and (x) the Second Modification Agreement, dated as of May 1, 1988 between Trustee, Lender and Borrower Partnership.

(b) Paragraph F. is modified by deleting the last sentence thereof and inserting the following in its place:

Notwithstanding anything to the contrary contained in this Paragraph F., Myron C. Warshauer, Ruvir Corporation and Richard A. Stein shall be and remain personally liable pursuant to the terms of that Guaranty of Payment dated January 1, 1987, as amended by the First Amendment to Guaranty of Payment, dated as of May 1, 1988.

6. Modification of Security Agreement, as amended by the Modification Agreement.

(a) The first paragraph following the WHEREAS clause shall be deleted in its entirety and the following inserted in its place:

NOW, THEREFORE, to secure to Secured Party payment of all principal and interest under the Note and payment and performance of all obligations under the Loan Documents Debtor hereby grants a security interest in, transfers and assigns to Secured Party all of Debtor's right, title and interest in and to all items of personal property described on Exhibit "A" attached hereto and made a part hereof, together with any additions thereto or replacements thereof (all of the foregoing hereinafter collectively referred to as the "Collateral"), now or hereafter located at or used in connection with that certain tract of land together with improvements thereon, lying and being in Cook County, Illinois, and being more particularly described on Exhibit "B" attached hereto and made a part hereof. The term "Note" as used herein shall mean the Promissory Note dated December 12, 1984 in the original principal amount of \$44,000,000 made by Trustee to Secured Party, as modified by that certain Modification of Promissory Note dated May 1, 1986 made by Trustee, as further amended and restated by (i) that certain Amended and Restated Promissory Note made by Trustee dated January 1, 1987 and (ii) that certain Second Amended and Restated

8315593

Promissory Note, dated as of May 1, 1988, Trustee to the Lender. The term "Loan Documents" as used herein shall mean (i) the Note, (ii) the Mortgage, Assignment of Rents and Security Agreement dated December 6, 1984 made by Trustee to Secured Party recorded as Document No. 27377737 in the records of Cook County, Illinois as modified by the Modification of Mortgage, Assignment of Rents and Security Agreement dated May 1, 1986 made by Trustee and recorded as Document No. 86385553 in the records of Cook County, Illinois, (iii) the Security Agreement and Assignment of Interest and Land Trust dated December 6, 1984 made by the Debtor to Secured Party, (iv) the Assignment of Rents and Leases dated December 6, 1984 made by Borrower to Secured Party recorded as Document No. 27377739 in the records of Cook County, Illinois, (v) the Assignment of Contract Documents dated December 6, 1984 made by Debtor to Secured Party recorded as Document No. 27377738 in the records of Cook County, Illinois, (vi) the Security Agreement dated December 6, 1984 made by Debtor to Secured Party, (vii) the Loan Agreement dated June 26, 1984 between Debtor and Secured Party, (viii) the Loan Restructuring Agreement dated May 1, 1986 between Debtor and Secured Party, (ix) the Modification Agreement dated January 1, 1987 between Secured Party and Debtor and recorded as Document No. 86167010 in the records of Cook County, Illinois, and (x) the Second Modification Agreement, dated as of May 1, 1988, among the Trustee, the Debtor and the Secured Party.

(b) Article III, Paragraph 11 is amended by deleting the last sentence in its entirety and inserting the following:

Notwithstanding anything to the contrary contained in this Paragraph 11, Myron C. Warshauer, Ruvir Corporation and Richard A. Stein shall be and remain personally liable pursuant to the terms of that Guaranty of Payment dated January 1, 1987, as amended by the First Amendment to Guaranty of Payment, dated as of May 1, 1988.

86315593

7. Modification of Assignment of Beneficial Interest, as amended by the Modification Agreement.

(a) The second "WHEREAS" clause is deleted in its entirety and the following inserted in its place:

WHEREAS, Debtor, Trustee and Secured Party entered into a Loan Agreement (the "Loan Agreement") dated June 26, 1984.

WHEREAS, pursuant to the Loan Agreement, Debtor caused Trustee to execute a note (the "Note") dated December 12, 1984 in the principal amount of \$44,000,000.

WHEREAS, Debtor caused Trustee to execute a Modification of Promissory Note (the "Note Modification") which modified certain terms of the Note.

WHEREAS, Debtor caused Trustee to execute an amended and restated note (the "Restated Note"), dated as of January 1, 1987 which amended certain terms of the Note and restates the Note.

WHEREAS, Debtor caused Trustee to execute Second Amended and Restated Promissory Note (the "Second Restated Note"), dated as of May 1, 1988, which amends certain terms of the Note and the Restated Note (all indebtedness and other obligations evidenced by the Note, as modified by the Note Modification and as amended and restated by the Restated Note and the Second Restated Note, are hereinafter collectively referred to as the "Indebtedness").

8. Modification of Yield Protection Agreement

The following terms, originally defined in the Recital and Section 1 of the Yield Protection Agreement shall be redefined as follows:

"Additional Interest" shall mean the excess of (i) Projected Interest earned between May 1, 1988 and the First Transaction Date over (ii) the aggregate of (X) the

88315593

UNOFFICIAL COPY

Contingent Interest Credit, or any available to Borrower pursuant to the terms of the Note (Y) Minimum Interest actually paid to Lender after May 1, 1988 in accordance with the terms of the Note and (Z) Contingent Interest actually paid to Lender after May 1, 1988 in accordance with the terms of the Note.

"Casualty" shall mean any act or occurrence which results in material damage to fifty (50%) percent or more of the total area of the Property.

"Condemnation" shall mean any taking of fifty (50%) percent or more of the total area of the Property by any governmental authority as a result of the exercise of the power of eminent domain.

"First Transaction Date" shall mean the first to occur of (i) the date of prepayment in full of the Note, (ii) December 31, 1994, (iii) the date on which any proceeds (cash or non-cash) are paid to Borrower from the Sale of the Property, or (iv) the date on which Net Proceeds from the first Refinancing, Condemnation or Casualty are distributed to Borrower.

"Modification Agreement" shall mean the Second Modification Agreement, dated as of May 1, 1988, between the Lender and the Borrower.

"Note" shall mean the Second Amended and Restated Promissory Note, dated as of May 1, 1988 by the Trustee in favor of the Lender.

"Performance Mortgage" shall mean that certain Performance Mortgage and Security Agreement dated as of January 1, 1987 made by Trustee to Lender to secure performance by Borrower of all Borrower's obligations under and pursuant to this Agreement as amended by the Modification Agreement.

"Principal Amount" shall mean \$44,000,000.00.

9. Modification of Performance Mortgage

(a) The second paragraph of Article 1 on Page 1 is deleted and the following is inserted in its place:

This Mortgage is delivered in connection with the modification of a certain Loan Agreement (the "Loan Agreement") dated June 26, 1984 by and among Lender, Borrower and NORTH LOOP TRANSPORTATION CENTER LIMITED PARTNERSHIP, an Illinois limited partnership

(the "Partnership"), as modified by a Second Modification Agreement (the "Second Modification Agreement"), dated as of May 1, 1988 by and among Lender, Borrower and the Partnership. In connection therewith, Borrower and, where applicable, Borrower has executed and delivered to Lender a Second Amended and Restated Promissory Note, dated as of May 1, 1988 (the "Second Restated Note"), an Amended and Restated Mortgage and Yield Protection Agreement, as modified by a Second Modification Agreement (the "Second Modification Agreement"), dated as of May 1, 1988 by and among Lender, Borrower and the Partnership (the Second Restated Note, Amended and Restated Mortgage, Yield Protection Agreement, Loan Agreement and Second Modification Agreement being collectively referred to as "Loan Documents"). As set forth below, this Mortgage secures the obligations of Borrower and Partnership under the Yield Protection Agreement as modified by the Second Modification Agreement.

(b) The Habendum clauses on page 4 are deleted and the following are inserted in their place.

TO HAVE AND HOLD the same unto the Lender, its successors and assigns forever for the purpose of securing:

I. The payment of all amounts to be paid and performance and/or observance of all of the terms, covenants, conditions and provisions to be performed or observed by the Borrower and by North Loop Transportation Center Limited Partnership (the "Partnership"), an Illinois limited partnership, pursuant to the terms of that certain Yield Protection Agreement of even date herewith among Borrower, Lender and Partnership, as modified by a Second Modification Agreement, dated as of May 1, 1988 among Borrower, Lender and the Partnership ("Yield Protection Agreement").

II. The payment of all advances, costs, fees, expenses or other sums advanced or incurred by the Lender pursuant to the terms

58315593

hereof. (The amounts due under the Yield Protection Agreement, as modified by a Second Modification Agreement, dated as of May 1, 1988 among Borrower, Lender and the Partnership, and any advances, costs, fees, expenses or other sums advanced or incurred by the Lender pursuant to the terms hereof, together with interest thereon, are hereinafter referred to as the "Indebtedness.")

10. Modification of Subordinate Assignment of Beneficial Interest

The Second WHEREAS Clause on page 1 is deleted in its entirety and the following is inserted in its place:

WHEREAS, Assignor, Land Trustee and Assignee entered into a Yield Protection Agreement of even date herewith, as modified by the Second Modification Agreement, dated as of May 1, 1988 by and among Assignor, Land Trustee and Assignee (the "Yield Protection Agreement").

11. Event of Default. It shall be an Event of Default under the Loan Agreement, the Mortgage and the Performance Mortgage, if Borrower shall fail to timely comply with any of the covenants made by it in this Agreement.

12. Costs. On the date hereof, Borrower shall pay to Lender all of the reasonable costs and expenses, including future reasonable costs and expenses, of Lender incurred in connection with the negotiation and implementation of this Agreement including, without limitation, reasonable appraisal and reasonable attorneys' fees. Additionally, Borrower shall pay all other costs incurred in connection with this Agreement including, without limitation, escrow fees, title insurance premiums,

88315593

UNOFFICIAL COPY

8 8 3 1 5 5 9 3

recording fees, transfer or mortgage taxes, and tax service costs.

13. Estoppel. Trustee and Borrower represent and warrant that there is no defense to, or right of offset against, any amount payable under any of the Loan Documents.

14. No other Modification. Except as modified by this Second Modification Agreement, the Modification Agreement and the First Mortgage Modification, none of the Loan Documents has been modified, amended or supplemented and each such document remains in full force and effect.

15. Trustee Exculpation. This Second Modification Agreement is executed by the Trustee not personally, but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee. No personal liability shall be asserted or be enforceable against the Trustee because or in respect of this Second Modification Agreement or the making, issue, transfer or enforcement hereof, all such liability of the Trustee, if any, being expressly waived by Lender, and the sole remedies of Lender against the Trustee shall be as provided in the Loan Documents and any other documents given to secure the Note, in accordance with the terms and provisions contained therein.

16. Notices. All notices, requests, demands and other communications required or permitted hereunder and under the Loan Agreement, Assignment of Leases, Assignment of Beneficial Interest, Security Agreement, Mortgage, Assignment of Contracts,

88315593

UNOFFICIAL COPY

8 3 3 1 5 5 9 3

Yield Protection Agreement, Subordinate Assignment of Beneficial Interest, and the Performance Mortgage shall be in writing, and shall be deemed to be given or delivered 72 hours after sent by registered or certified mail, postage fully prepaid, addressed to the party to whom directed at its address set forth below or at such other address as such party may have specified theretofore by notice actually received by the other party:

to Lender:

FCA American Mortgage Corporation
343 East Main Street
Stockton, California 95202

Attention: Joseph J. Catalano, Esq.

Copy to:

FCA American Mortgage Corporation
343 East Main Street
Stockton, California 95202

Attention: Ms. Patricia Peasley

and

FCA American Mortgage Corporation
343 East Main Street
Stockton, California 95202

Attention: Mr. Peter Fadum

and

Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, New York 10038

Attention: W. Christopher White, Esq.

88315593

UNOFFICIAL COPY

Property of Cook County Clerk's Office

12/20/2011

UNOFFICIAL COPY

8 8 3 1 5 5 9 3

If to Borrower:

North Loop Transportation Center Limited
Partnership
c/o Richard Stein Development Company, Inc.
208 South LaSalle Street, Suite 1630
Chicago, Illinois 60604

Attention: Richard S. Rosenstein

Copy to:

Altheimer & Gray
333 West Wacker Drive, Suite 2600
Chicago, Illinois 60606

Attention: George W. Davis, Esq.

17. Miscellaneous.

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

(b) Terms, provisions, covenants and conditions hereof shall be binding upon Trustee and Partnership and their respective successors and assigns and shall inure to the benefit of the Lender and its successors and assigns.

(c) This Agreement may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same agreement.

(d) The unenforceability, for any reason, of any provision of this Agreement shall not limit or impair the operation or validity or enforcement of any other provision of this Agreement or of any of the other Loan Documents.

(e) No consent or waiver, express or implied, by Lender to any breach or default by Trustee or Partnership in the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 3 3 1 5 5 9 3

performance by Trustee or Partnership of their respective obligations under this Agreement or any other Loan Document shall be deemed or construed to be a consent or waiver to any other breach or default in the performance by Trustee or Partnership of the same or any other obligation of either under this Amendment Agreement or any other Loan Document.

(f) This Agreement may not be changed, waived, discharged or terminated orally but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

(g) Failure on the part of Lender to object to any act or failure of Trustee or Partnership or to declare Trustee or Partnership in default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder.

86315593

UNOFFICIAL COPY

Property of Cook County Clerk's Office

PROPERTY

UNOFFICIAL COPY

8 3 3 1 5 5 9 3

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

ATTEST: FCA AMERICAN MORTGAGE CORPORATION,
a California corporation

By: _____

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, as Trustee under Trust No. 52947

ATTEST:

[Signature]

By: _____

NORTH LOOP TRANSPORTATION CENTER LIMITED PARTNERSHIP, an Illinois limited partnership

By: Richard A. Stein Development Company, Inc., an Illinois corporation, a General Partner

By: *[Signature]*

By: Myron C. Warshauer Development Company, Inc., an Illinois corporation, a General Partner

By: *[Signature]*

By: Ruvir Corporation, a California corporation, a General Partner

By: _____

This Instrument Prepared by: \$SEND TO

W. Christopher White
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, New York 10038

8315593



UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 3 3 1 5 5 9 3

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

ATTEST:

FCA AMERICAN MORTGAGE CORPORATION,
a California corporation

Peter G. Fadh

By:

Patricia Peasley
AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO, a national
banking association, as Trustee
under Trust No. 52947

ATTEST:

By: _____

NORTH LOOP TRANSPORTATION CENTER
LIMITED PARTNERSHIP, an Illinois
limited partnership

By: Richard A. Stein Development
Company, Inc., an Illinois
corporation, a General Partner

By: _____

By: Myron C. Warshauer Development
Company, Inc., an Illinois
corporation, a General Partner

By: _____

By: Ruvir Corporation, a California
corporation, a General Partner

By: _____

This Instrument Prepared by: *Sand to*

W. Christopher White
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, New York 10038

88315593

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

8 0 3 1 5 5 9 3

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

ATTEST:

FCA AMERICAN MORTGAGE CORPORATION
a California corporation

By: _____

AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO, a national
banking association, as Trustee
under Trust No. 52947

ATTEST:

By: _____

NORTH LOOP TRANSPORTATION CENTER
LIMITED PARTNERSHIP, an Illinois
limited partnership

By: Richard A. Stein Development
Company, Inc., an Illinois
corporation, a General Partner

By: _____

By: Myron C. Warshauer Development
Company, Inc., an Illinois
corporation, a General Partner

By: _____

By: Ruvir Corporation, a California
corporation, a General Partner

By: *[Signature]*

This Instrument Prepared by:

W. Christopher White
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, New York 10038

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/22/2024

UNOFFICIAL COPY

8 3 7 1 5 5 9 3

LEGAL DESCRIPTION OF PROPERTY

LOT 27 (TRANSPORTATION CENTER) IN LOOP TRANSPORTATION CENTER SUBDIVISION, A RESUBDIVISION OF PART OF BLOCK 18 IN THE ORIGINAL TOWN OF CHICAGO, IN THE SOUTH EAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

8E315593

UNOFFICIAL COPY

Property of Cook County Clerk's Office

5/16/2025

UNOFFICIAL COPY

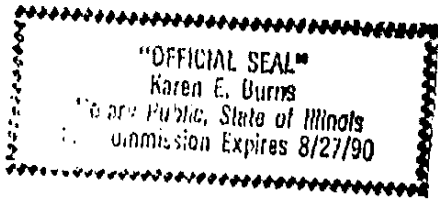
8 3 3 1 5 5 9 3

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, KAREN E. BURNS, a Notary Public in and for said County, in the State aforesaid, do hereby certify that MICHAEL WIELAN VICE PRESIDENT President of American National Bank and Trust Company of Chicago, a national banking association ("Bank") and Assistant Secretary Secretary of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE PRESIDENT President, Assistant Secretary Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth, and the said Assistant Secretary Secretary, did also then and there acknowledge that he/she, as custodian for the corporate seal of said Bank, did affix the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

JUL 15 1988

Given under my hand and Notarial Seal this ___ day of _____, 1988.



Karen E. Burns
Notary Public

83315593

DEPT-01 RECORDING

TR1111 TRAM 0177 07/10/88 0048.00

14736 119 * 88-315593

COOK COUNTY RECORDER

83315593 \$37.00

UNOFFICIAL COPY

Property of Cook County Clerk's Office