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AGREEMENT REGARDING NOTE AND MORTGAGE

89281248

THIS AGREEMENT is made and entered into as of August 1, 1988 by and among PHOENIX MUTUAL LIFE INSURANCE COMPANY, a specially chartered Connecticut corporation ("Phoenix"), LA SALLE NATIONAL BANK, not personally but solely as Trustee under the provisions of that certain Trust Agreement dated February 16, 1978 and known as Trust No. 10-33602-09 (the "LaSalle Trust"), and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as Trustee under the provisions of that certain Trust Agreement dated November 5, 1983 and known as Trust No. 60300 (the "American Trust") (the LaSalle Trust and the American Trust are sometimes hereinafter referred to jointly as "Borrower").

Recitals

\$18.00

A Borrower is the owner of certain real property located in Cook County, Illinois and legally described on Exhibit A attached hereto and made a part hereof (the "Property"). The Property is subject to that certain Mortgage from Borrower, as Mortgagor, to Phoenix, as Mortgagee, dated as of December 27, 1985 and recorded in the land records of Cook County, Illinois as Document No. 86000352 (the "Mortgage"). The Mortgage secures payment of that certain Mortgage Note of even date therewith from Borrower, as Maker, to Phoenix, as Lender or holder thereof, in the original principal amount of \$4,300,000 (the "Note"). Payment of the Note and the indebtedness evidenced thereby (the "Debt") is secured by, among other things, that certain Assignment of Rents and Lessor's Interest in Leases from Borrower and Alan H. Israel ("Israel"), the sole beneficiary of Borrower, to Phoenix (the "Assignment"), that certain Combined Secu-

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11/10/00

11/10/00

"In addition to the fixed payments of principal and/or interest provided for above, Maker agrees to make contingent payments of principal on the first day of September in 1989, 1990, 1991 and 1992 in an amount

"The monthly payments of interest provided for in subsections (iv) and (v) in the preceding paragraph are less than the interest that will accrue on the unpaid principal balance of this Note at the loan rate during the periods covered by such monthly payments. That portion of the interest that accrues at the loan rate during a given month but is not included in the installment of interest due on the first day of the next month shall be added to the unpaid principal balance of this Note on such first day of the next month and, thereafter, interest at the loan rate shall be charged and accrue on the principal balance as so increased. All interest under this Note that is added to the unpaid principal balance, except for the capitalized interest referred to in subsection (iii) in the preceding paragraph, is hereinafter referred to collectively as the "Deferred Interest".

"(vi) The principal balance of this Note, if not sooner declared to be due and payable in accordance with the terms hereof, together with all accrued and unpaid interest, shall be due and payable in full on February 1, 1993 (the "Maturity Date")."

"(v) Commencing on September 1, 1990 and continuing on the first day of each and every month thereafter to and including January 1, 1993, interest only payments in the amount of FORTY-THREE THOUSAND SIX HUNDRED TEN AND 23/100 DOLLARS (\$43,610.23) shall be due and payable.

"(v) Commencing on September 1, 1989 and continuing on the first day of each and every month thereafter to and including August 1, 1990, interest only payments in the amount of THIRTY-SEVEN THOUSAND SIX HUNDRED TWENTY-FIVE AND NO/100 DOLLARS (\$37,625.00) shall be due and payable.

"(iv) Commencing on September 1, 1988 and continuing on the first day of each and every month thereafter to and including August 1, 1989, interest only payments in the amount of THIRTY-FOUR THOUSAND FORTY-ONE AND 67/100 DOLLARS (\$34,041.67) shall be due and payable.

"(iii) On August 1, 1988, the interest accruing on the unpaid principal balance of this Note from and including June 2, 1988 to and including August 1, 1988, to wit: EIGHTY-TWO THOUSAND FOUR HUNDRED SIXTY-SEVEN AND 66/100 DOLLARS (\$82,416.66) (hereinafter referred to as the "Capitalized Interest"), shall be added to such principal balance and interest at the loan rate shall thereafter be charged and accrue on the principal balance as so increased.

"(ii) Commencing on March 1, 1986, and continuing on the first day of each and every month thereafter to and including June 1, 1988, interest only payments in the amount of FORTY-ONE THOUSAND TWO HUNDRED EIGHT AND 33/100 DOLLARS (\$41,208.33) shall be due and payable.

2. Subsections (ii) and (iii) of the second grammatical paragraph on page 1 of the Note are deleted and the following is substituted therefor:

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"Except for the contingent payments of the Deferred Interest provided for herein, all payments during the first five years of the loan on account of the interest accrued and unpaid interest on the capitalized interest and/or the Deferred Interest, Maker having no other right to prepay the principal balance of this Note during the first five loan years."

4. The first sentence in the first grammatical paragraph on page 3 of the Note is amended to read as follows:

3. All references to the unpaid principal balance of the Note in the Note, the Mortgage and any of the other Loan Documents shall be deemed to refer to the unpaid principal balance of the Note as increased by the Capitalized Interest (as defined in the Note) and/or the Deferred Interest (as defined in the Note).

defined in Section 30 of the Mortgage). "Fiscal Year shall be based upon the Annual Statement (as Net Cash Flow received by Maker during any given operation and management of the Premises. The amount of reasonable and customary expenses associated with the accounting, including annual audit, and any other commissions, unreimbursed tenant improvements, legal, maintenance, advertising and promotion, leasing, laboration, common area utilities, supplies, repairs, admin- real estate taxes, assessments and insurance (or de- substantiated by submitted receipts (upon request), for bona fide operating expenses with respect to the Premises, question, whichever is less; and (c) actual and bona interest and Deferred interest on this Note; (b) actual cash basis, during the Fiscal Year in question; (a) following items to the extent that they are paid, on a defined as "Gross Cash Flow", less the sum of the maintaining the Premises (such total being herein to reimburse Maker for the cost of operating and limitation on amounts paid by tenants of the Premises deposits until forfeited, but including without (except proceeds from rent loss or business interruption insurance), refinancing proceeds and security and other management, leasing and occupancy of the Premises (as hereinafter defined), excluding insurance proceeds respect to or derived from the ownership, operation, Maker, on a cash basis, during a given Fiscal Year with defined as the total of all amounts received by "For the purposes of this Note, Net Cash Flow shall

equal to the Deferred Interest outstanding on the first day of August in the calendar year in which the payment the twelve month period immediately preceding the first day of August is due (such twelve month period is in question is due (such twelve month period is hereinafter referred to as the "Fiscal Year"); and provided further that if there is no Net Cash Flow for a given Fiscal Year, no contingent payment of principal shall be due on the first day of September following such Fiscal Year. Notwithstanding anything to the contrary contained in this Note, no prepayment premium shall be payable in connection with any contingent payment of principal provided for in this paragraph.

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9. Borrower hereby represents and Israel represents and warrants that: (a) Borrower has the full power and authority to make the agreements contained in this agreement; (b) the execution, delivery and performance of this agreement and the Letter of Credit Agreement referred to in Paragraph 7 hereof will not contravene or constitute an event of default which Israel or which the passage of time or the giving of notice or both would constitute an event of default under any mortgage, loan agreement, indenture or any other agreement to which Borrower or Israel or both are a party or by which Borrower, Israel or any property of either of them is bound; and (c) there exists no default under the Note or the Mortgage, as modified hereby. Borrower and Israel hereby jointly and severally agree to indemnify and hold Phoenix harmless from and against any and all loss, claim, damage, liability or expense (including without limitation reasonable attorneys' fees and court costs) that Phoenix may suffer or incur if any of the respective representations and/or warranties of Borrower and Israel prove to be untrue or incorrect in any material respect.

8. Borrower agrees to perform, in accordance with all of their respective terms and conditions, the Note, the Mortgage and the other Loan Documents and agrees that any performance or nonperformance of the same by it prior to the date of this Agreement shall in no way affect or diminish the right of Phoenix hereafter to require strict compliance with all of such terms and conditions.

7. Contemporaneously with the execution of this Agreement, Phoenix and Borrower are entering into a Letter of Credit Agreement, a default by Borrower under such Letter of Credit Agreement shall constitute an Event of Default under the Mortgage.

"Mortgagor shall cause to be delivered to Mortgagee, on or before the first day of September in each calendar year during the term of this Mortgage, an annual financial statement (the "Annual Statement") prepared and audited by an independent certified public accountant acceptable to Mortgagee. The Annual Statement shall include, all in such detail as Mortgagee shall reasonably require, the following: (a) a detailed statement showing the Gross Cash Flow (as defined in the Note), the Net Cash Flow (as defined in the Note) and all expenses and operating costs attributable to the premises, on a cash basis, during the twelve month period immediately preceding the first day of August in the calendar year in which the Annual Statement in question is due; (b) a balance sheet of Mortgagor with respect to the operation and rental of the premises during such twelve month period and (c) a statement listing all accounts receivable and all accounts payable by Mortgagor with respect to the operation and rental of the premises as of the end of such twelve month period and specifying the nature and due date of each amount listed."

30. Financial Statements.

6. Paragraph 30 on page 18 of the Mortgage is deleted and the following is substituted therefor:

"Except for contingent payments of Deferred Interest (as defined in the Note), all payments during the first five years of the loan on account of the indebtedness evidenced by the Note shall be applied only to interest on the unpaid principal."

5. The third sentence in the second grammatical paragraph on page 1 of the Mortgage is amended to read as follows:

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10. All agreements between Borrower and Phoenix, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of acceleration of the maturity of the Note or otherwise, shall the interest contracted for, charged or received by Phoenix exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Phoenix in excess of the maximum lawful amount, the interest payable to Phoenix shall be reduced to the maximum amount permitted under applicable law; and it deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the principal of the Note and not to the payment of interest, or, if such excessive interest exceeds the unpaid balance of principal of the Note, such excess shall be refunded to Borrower. All interest paid or agreed to be paid to Phoenix shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period so that payment in full of the principal and the interest for such full period shall not exceed the maximum amount permitted by applicable law. This paragraph shall control all agreements between Borrower and Phoenix with respect to the Debt.
11. The terms and conditions hereof may not be modified, amended, altered or otherwise affected except by an instrument in writing executed by Phoenix and Borrower.
12. Borrower hereby agrees to execute and deliver to Phoenix such further documents and instruments evidencing or pertaining to the Debt as may be reasonably requested by Phoenix from time to time so as to evidence the terms and conditions hereof.
13. Any notices permitted or required pursuant to the terms hereof shall be given as provided in Section 24 of the Mortgage.
14. This Agreement is executed by Lasalle National Bank, not personally but as Trustee of Trust No. 17-33602-09, and American National Bank and Trust Company of Chicago, not personally but as Trustees under Trust No. 60300, in the exercise of the power and authority conferred upon and vested in such Trustees (and said Banks warrant that they possess full power and authority to execute this Agreement), and it is expressly understood and agreed that nothing herein contained or in the Note or the Mortgage shall be construed as creating any liability on Borrower (or Borrower's beneficiary) or on said Banks personally to pay the Note or any interest that may accrue thereon, or any indebtedness that may accrue thereunder, or to perform any covenant either express or implied contained herein or in the Note or the Mortgage, such liability, if any, being expressly waived by Phoenix and by every person now or hereafter claiming a right or security thereunder, and that insofar as Borrower (or Borrower's beneficiary) and its successors and said Banks are personally concerned, the holders and the owners of any indebtedness accruing hereunder or thereunder shall look solely to any one or more of: (a) the Parties and the rents, issues and profits thereof; (b) assets of the Lasalle Trust and the American Trust; and (c) the Loan Documents and any other security given to secure such indebtedness.
15. By execution hereof, Israel (a) consents to the execution of this Agreement by Phoenix and Borrower, (b) agrees to be liable for the warranties set forth in Paragraph 9 hereof, (c) agrees to be liable, jointly and severally with Borrower, for the representations and indemnity agreement set forth in such Paragraph 9, (d) ratifies and confirms his obligations under each of the Loan Documents to which he is a party and (e) agrees to act in good faith to cause Borrower to perform all of its obligations hereunder and under the Loan Documents, as amended hereby.

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MARIA E. HERRERA
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1993

Maria E. Herrera
Notary Public
My commission expires: 2001 12 31 MARCH 31 1993

(seal)

1989. GIVEN under my hand and notarial seal, this 20th day of April, 1989.
I, Maria E. Herrera, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Keith D. Robbins, Vice President of Phoenix Mutual Life Insurance Company, a specially chartered Connecticut corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument in such capacity, appeared before me this day in person and acknowledged that he signed and delivered such instrument as his own free and voluntary act and as the free and voluntary act of said Corporation for the uses and purposes therein set forth.

STATE OF CONNECTICUT
) SS. Hartford
() COUNTY OF HARTFORD

ALAN H. ISRAEL, solely for the purposes set forth in Paragraph 15 hereof.

Attest: Name: J. J. WILSON
Title: ASSISTANT SECRETARY
Name: J. J. WILSON
Title: ASSISTANT SECRETARY

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally or individually, but solely as Trustee of Trust No. 68700

LA SALLE NATIONAL BANK, not personally or individually, but solely as Trustee of Trust No. 10-33602-09
By: Name: JOSEPH W. LANG
Title: VICE PRESIDENT

Attest: Name: ALAN J. WELTER
Title: ASSISTANT SECRETARY

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PHOENIX MUTUAL LIFE INSURANCE COMPANY
By: Name: Keith D. Robbins
Title: Vice President

Attest: Name: Lewis A. Singer
Title: Secretary

16. All recitals and exhibits hereto are incorporated herein and made a part hereof.
IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed this Agreement as of the date first above written.

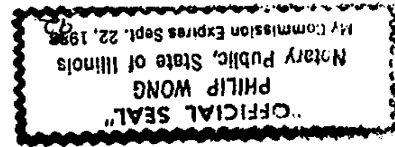
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HEREIN IS UNCLASSIFIED
DATE 11-14-88 BY 1043/STW

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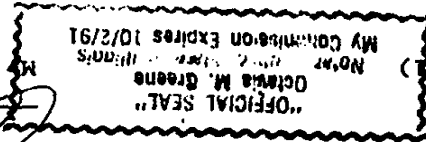
Notary Public Philip Wong
My commission expires: 9/22/89

GIVEN under my hand and notarial seal, this 4th day of April, 1989.

I, Philip Wong, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Alan H. Israel, 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.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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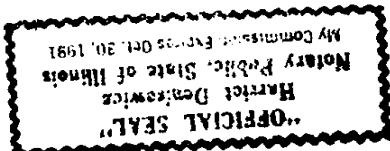


(seal) Notary Public Octavia M. Greene
My Commission Expires 10/2/91

GIVEN under my hand and notarial seal, this _____ day of _____, 1989.

I, Octavia M. Greene, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, Vice President of American National Bank and Trust Company of Chicago, as Trustee, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Assistant Secretary, 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 Bank, as Trustee, for the uses and purposes therein set forth.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)



Notary Public Harriet Deniewicz
My commission expires: _____

GIVEN under my hand and notarial seal, this _____ day of _____, 1989.

I, Harriet Deniewicz, a Notary Public in and for said County, in the State aforesaid, do hereby certify that JOSEPH W. LANG, Vice President of Lasalle National Bank, as Trustee, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Assistant Secretary, 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 Bank, as Trustee, for the uses and purposes therein set forth.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT BETWEEN THE VILLAGE OF NORTHBROOK, LA SALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED FEBRUARY 16, 1978 AND KNOWN AS TRUST NUMBER 10-33602-09, AND AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED JULY 9, 1984 AND RECORDED JULY 13, 1984 AS DOCUMENT 27171232, FOR INGRESS, EGRESS, DRIVEWAY AND OFF-STREET PARKING OVER PORTIONS OF THE EAST 2 ACRES OF THE WEST 6 ACRES OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE SOUTH 50 FEET THEREOF TAKEN IN CASE NO. 70L1934, BY THE COUNTY OF COOK), IN COOK COUNTY, ILLINOIS.

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL 2 AS CREATED BY EASEMENT AGREEMENT BETWEEN THE VILLAGE OF NORTHBROOK, LA SALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED FEBRUARY 16, 1978 AND KNOWN AS TRUST NUMBER 10-33602-09, AND AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 8, 1983 AND KNOWN AS TRUST NUMBER 60300, DATED JULY 13, 1984 AND RECORDED JULY 13, 1984 AS DOCUMENT 27171232 FOR INGRESS, EGRESS, DRIVEWAY AND OFF-STREET PARKING OVER PORTIONS OF THE WEST 2 ACRES (EXCEPT THE SOUTH 50 FEET THEREOF) OF THE EAST 4 ACRES OF THE WEST 10 ACRES OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTH WEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 3 AS CREATED BY EASEMENT AGREEMENT TAKEN IN CASE NO. 70L1934 BY THE COUNTY OF COOK), IN COOK COUNTY, ILLINOIS.

THE EAST 2 ACRES OF THE WEST 6 ACRES OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTH WEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE SOUTH 50 FEET THEREOF TAKEN IN CASE NO. 70L1934 BY THE COUNTY OF COOK), IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE WEST 2 ACRES (EXCEPT THE SOUTH 50 FEET THEREOF) OF THE EAST 4 ACRES OF THE WEST 10 ACRES OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTH WEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 1:

(Property Description)

EXHIBIT A

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