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HUBBARD STREET

89363330

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INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT ("Indemnity Agreement") is made as of this ^{4th} day of July, 1989 by CAMERON B. KUHN ("Indemnitor"), the owner and holder of 100% of the entire beneficial interest and power of direction in, to and under that certain Illinois land trust created pursuant to Trust Agreement dated February 27, 1989 and known as Trust No. 29009 of Cosmopolitan National Bank of Chicago ("Borrower") to and for the benefit of CANADA LIFE INSURANCE COMPANY OF AMERICA, its successors and assigns ("Lender").

WITNESSETH:

WHEREAS, Lender has agreed to make a loan in the amount of One Million One Hundred Thousand Dollars (\$1,100,000.00) to the Borrower (the "Loan") which Loan is evidenced by a certain Mortgage Note (the "Note") of even date herewith made by the Borrower to the order of Lender in the original principal amount of One Million One Hundred Thousand Dollars (\$1,100,000.00). The Note is secured, among other things, by a Mortgage (the "Mortgage") and Assignment of Rents and Leases (the "Assignment") of even date herewith made by the Borrower granting a lien on certain real estate legally described on Exhibit A attached hereto and by this reference made a part hereof and certain improvements or personal property now or hereafter located thereon (the "Property"). (The Note, Mortgage, Assignment and other documents evidencing and securing the Loan are herein referred to collectively as the "Loan Documents".)

WHEREAS, as one of the conditions of its agreement to make the Loan, Lender is requiring the execution and delivery of this Indemnity Agreement.

AGREEMENTS

NOW, THEREFORE, to induce Lender to make the Loan and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Indemnitor hereby agrees as follows:

A. Environmental Indemnity

1. Defined Terms:

- (a) "Claim" shall mean any demand, cause of action, proceeding, or suit for damages (actual or punitive), injuries to person or property, damages to natural resources, fines, penalties, liability, interest, or losses, or for the costs of site investigations, feasibility studies, information requests, health assessments, contribution, settlement, or actions to correct, remove, remediate, respond to, clean up, prevent, mitigate, monitor, evaluate, assess, or abate the release of a Hazardous Material, or to enforce insurance, contribution, or indemnification agreements.

JGG0495 07/07/89 1031

This instrument was prepared by and after recording
 return to: Julie Galassini,
 Rudnick - Wolff,
 203 N. La Salle St, Suite 1800
 Chicago, Ill. 60601

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Box 333

72-14-443 D2

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- (b) "Environmental Law" shall mean and include all federal, state and local statutes, ordinances, regulations and rules relating to environmental quality, health, safety, contamination and clean-up, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq., and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. Section 136 et seq.; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 et seq.; the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq.; the Noise Control Act, 42 U.S.C. Section 4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 3001 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Section 2601 et seq.; the Atomic Energy Act, 42 U.S.C. Section 2011 et seq., and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 et seq.; and the Environmental Protection Act of Illinois ("IEPA"), Ill. Rev. Stat. ch. 111, par. 1001 et seq.; and state lien or superlien and environmental clean-up statutes, with implementing regulations and guidelines. Environmental Laws shall also include all state, regional, county, municipal, and other local laws, regulations, and ordinances insofar as they are equivalent or similar to the federal and state laws recited above or purport to regulate Hazardous Materials.
- (c) "Hazardous Materials" shall mean any hazardous substance, pollutant, contaminant, or waste regulated under CERCLA; asbestos and asbestos-containing materials; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel; pesticides regulated under FIFRA; PCBs and other substances regulated under TSCA; source material, special nuclear material, byproduct materials, and any other radioactive materials or radioactive wastes however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. §1910.1200 et seq.; and industrial process and pollution control wastes whether or not hazardous within the meaning of RCRA.
- (d) "Manage" means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon Hazardous Materials.
- (e) "Release" or "Released" shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging,

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injecting, escaping, leaching, dumping, or disposing of Hazardous Materials into the environment, as "environment" is defined in CERCLA.

- (f) "Response" or Respond" shall mean action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess, or abate the Release of a Hazardous Material.

2. The Indemnitor warrants and represents that:

- (a) The Property is and to the best of Indemnitor's knowledge has been operated and maintained in material compliance with all applicable Environmental Laws.

- (b) The Indemnitor has conducted or caused to be conducted appropriate inquiry into the current and previous uses of the Property in a manner consistent with good commercial or customary practice for purposes of meeting the standard for minimizing liability under CERCLA.

- (c) The Indemnitor has not received, and does not know of any previous or current owner or operator of the Property receiving, any summons, citation, directive, information inquiry or request, notice of potential responsibility, notice of violation or deficiency, order, Claim, complaint, investigation, judgment, letter, notice of environmental lien or response action in progress, or other communication, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Illinois Environmental Protection Agency, or other federal, state, or local agency or authority, or any other entity or individual, concerning, with regard to the Property, (i) any intentional or unintentional act or omission which has resulted or may result in the Release of a Hazardous Substance on or off the Property; (ii) the imposition of any lien on the Property; or (iii) any alleged violation of responsibility under Environmental Laws. The Indemnitor has no knowledge of any fact which could give rise to any of the foregoing.

- (d) No permits are held or are required to be held nor are any registrations or notices required to be made with respect to the Property in its current condition under Environmental Laws.

- (e) No Hazardous Materials are being Managed or have been Managed in, on, or about the Property.

- (f) Neither the Indemnitor nor his agents have Released or caused to be Released or allowed their agents to Release any Hazardous Materials in, on, or about the Property.

- (g) At the time of funding the Loan, no Hazardous Materials will be present in, on, or about the Property.

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- (h) There are no on-site containment, storage, treatment, or disposal facilities for Hazardous Materials on the Property, including without limitation underground storage tanks, sumps, fill and disposal areas, impoundments, and subsurface structures.

The foregoing warranties and representations shall be true and correct as of the date of the funding of the Loan and shall remain true and correct throughout the term of the Loan and, for such purpose, the term "Environmental Laws" shall be deemed to include such laws and any amendments thereof from time to time in effect. The Indemnitor shall be personally liable for damages incurred by Lender as a result of a breach of any of the foregoing. Notwithstanding the foregoing, Lender shall at all times have the right but not the obligation to independently establish to its satisfaction and in its absolute discretion the existence or nonexistence of any fact material to the representations and warranties made by Indemnitor in this Agreement.

3. The Indemnitor shall indemnify, hold harmless, and defend Lender, any successor to Lender, and any current or former officer, director, employee or agent of Lender from any and all Claims arising out of or in any way relating to the existence of any Hazardous Materials on the Property, including, but not limited to: (a) claims of third parties (including governmental agencies) for damages, penalties, Response costs, and injunctive or other relief; (b) costs of Response and restoration, including fees of attorneys and experts, and costs of reporting the existence of Hazardous Materials to any governmental agency; and (c) any and all expenses or obligations, including reasonable attorneys' fees, incurred before and after any trial or appeal therefrom whether or not taxable as costs, including, without limitation, reasonable attorneys' fees, witness fees, deposition costs, copying and telephone charges and other expenses, all of which shall be paid by Indemnitor within ten days of a demand therefor from Lender. The obligation for indemnification under this paragraph 3 shall terminate upon payment in full of the Loan ("Repayment"), except that Indemnitor shall continue to be strictly liable for Claims which may thereafter be asserted against Lender arising from or in connection with any Hazardous Materials existing on, in or under or affecting all or any portion of the Property or any surrounding areas prior to the date of Repayment.

4. The Indemnitor shall deliver to Lender, within five (5) days of receipt by the Indemnitor, any written report, citation, notice or other writing having an effect on or relating to the Indemnitor's compliance with any Environmental Law. Indemnitor shall deliver summaries of any oral reports to Lender within five (5) days of receipt.

B. General Indemnity

In addition, Indemnitor shall be and remain liable for and indemnify Lender against any and all loss, cost, damage, expense and liability resulting, directly or indirectly, from any of the following:

- (a) any act of fraud or misrepresentation by Indemnitor or other signatory to a document or instrument ("Signatory") made to any party in connection with the Loan; or
- (b) any willful or wanton act or acts by Indemnitor which results in waste to the Property; or

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(c) failure by Borrower or Signatory to apply any proceeds of insurance, condemnation awards or similar funds received by the aforementioned parties in strict accordance with the terms of the Mortgage; or

(d) failure by Borrower or Signatory to account for all rents, revenues, issues and profits from the Property received after the occurrence of a default or an Event of Default which are not applied to the indebtedness or other sums due of the Borrower covered by the Note or to the payment of the normal operating expenses of the Property; or

(e) failure by Borrower or Signatory to apply all security deposits received under any leases or other arrangements for occupancy of the Property ("Deposits") for any purpose other than those uses specifically permitted under the terms of the lease or other arrangement for occupancy under which the Deposit was given; or

(f) failure by Borrower after the occurrence of a default or Event of Default, to account for and remit to Lender all Deposits; or

C. GENERAL PROVISIONS

1. The Indemnitor shall be fully unconditionally, irrevocably and personally liable for all of his obligations hereunder, notwithstanding any exculpatory clauses of any kind contained in the Note or the Loan Documents.

2. Failure of the Indemnitor to comply with any provision, representation, warranty or covenant under this Indemnity Agreement, in addition to constituting a breach of this Indemnity Agreement, shall give Lender the right to declare a default or an Event of Default under the Loan Documents and shall give the Lender the right to avail itself of any and all remedies set out under the Loan Documents. Furthermore, failure by Lender to object to any action of Indemnitor shall in no way be construed as an express or implied approval by Lender of such action. The rights granted Lender under this Indemnity Agreement are in addition to the rights granted Lender under the Loan Documents.

3. In the event that Lender incurs any costs (including reasonable attorneys' fees and court costs) to collect and enforce the Indemnitor's obligations hereunder, the Indemnitor shall, upon demand by Lender immediately reimburse Lender therefor, including without limitation, reasonable attorneys' fees incurred in any litigation and bankruptcy and administrative proceedings, and appeals therefrom.

4. This Indemnity Agreement shall be construed according to and governed by the laws of the State of Illinois.

5. Time is of the essence of this Indemnity Agreement.

6. The obligations, duties, agreement, covenants and liabilities of the Indemnitor under this Indemnity Agreement shall be binding upon and enforceable against the Indemnitor and his heirs, legatees, legal representatives, successors and assigns.

7. All liabilities and obligations under this Indemnity Agreement are secured by the Mortgage and by the other Loan Documents.

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8. All notices, demands and other communications desired or required under this Indemnity Agreement shall be given in the manner provided in the Loan Documents.

IN WITNESS WHEREOF, the Indemnitor has executed this Indemnity Agreement as of the date set forth above.


Cameron B. Kuhn

Property of Cook County Clerk's Office

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EXHIBIT A 5 9 5 3 3 3 0

PARCEL 1:

LOT 2 (EXCEPT THE EAST 1/4 THEREOF) AND ALL OF LOTS 3 AND 4 AND THE EAST 30 FEET OF LOT 5 IN GREENBAUM'S RESUBDIVISION OF BLOCK 30 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2:

LOT 112 IN HULL'S SUBDIVISION OF BLOCK 19 IN THE CANAL TRUSTEES' SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address of Property: 1812-1840 West Hubbard Street
Chicago, Illinois

P.I.N. Nos.: 17-07-~~220-010~~-0000
17-07-230-001-0000
17-07-230-007-0000
17-07-230-008-0000
17-07-230-009-0000

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