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**THIS INSTRUMENT PREPARED BY
~~AND AFTER RECORDING RETURN TO:~~**

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MODIFICATION AGREEMENT

DEPT-01 RECORDING \$69.00
T#3333 TRAM 6719 10/20/92 15:45:00
#9762 * -92-781315
COOK COUNTY RECORDER

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THIS MODIFICATION AGREEMENT ("Agreement"), dated as of the 9th day of October, 1992, is made by and among **LaSALLE NATIONAL TRUST, N.A.** ("Trustee"), not personally, but as Trustee under a Trust Agreement dated May 1, 1990, and known as Trust No. 115-532 ("**Trust No. 115-532**"), and also as Trustee under a Trust Agreement dated December 23, 1986, and known as Trust No. 111928 ("**Trust No. 111928**" -- Trust No. 115-532 and Trust No. 111928 are sometimes collectively referred to herein as "**Land Trust**"), **BALMORAL RIVER PROPERTIES**, an Illinois general partnership, the sole beneficiary and holder of the power of direction under the Land Trust ("**Beneficiary**" and collectively with Land Trust, "**Borrower**"), and **BARCLAYS BANK PLC**, a banking corporation organized under the laws of England, acting through its New York branch, a branch of Barclays Bank PLC, licensed to do business in the State of New York and its successors and assigns ("**Lender**"). Lender and Borrower are sometimes referred to individually herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Trust No. 115-532 owns fee simple title to the real property located in the Village of Rosemont, Cook County, Illinois which is legally described on **Exhibit A-1** hereto, and Trust No. 111928 owns fee simple title to the real property located in the Village of Rosemont, Cook County, Illinois which is legally described on **Exhibit A-2** hereto (collectively, the "**Premises**").

B. The sole partners of Beneficiary are (a) Simon-Balmoral Developers Limited Partnership, an Indiana limited partnership ("**Simon Balmoral**"), Joseph S. Beale, an individual ("**Beale**") and Hawthorn-Balmoral Limited Partnership, an Illinois limited partnership ("**Hawthorn Balmoral**"). The sole general partner of Simon Balmoral is Simon-Balmoral, Inc., an Indiana corporation, a wholly-owned subsidiary of Melvin Simon & Associates, Inc., an Indiana corporation ("**MSA**" -- MSA and Beale are sometimes collectively referred to herein as the "**Guarantors**"). The sole general partners of Hawthorn Balmoral are Beale and J.S.B. Corp., an Illinois corporation ("**J.S.B.**").

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C. Beneficiary, Trust No. 111928 and Lender previously entered into a certain Construction Loan Agreement, dated as of June 6, 1991, pursuant to which Lender agreed to lend Borrower up to U.S. \$19,800,000 ("RPAC East Loan"). The RPAC East Loan is secured by, among other things, that certain Construction Mortgage dated as of June 6, 1991 and recorded in the Office of the Cook County Recorder of Deeds on June 17, 1991 as Document Number 91291767 ("RPAC East Mortgage"). Beneficiary, Trust No. 115-532 and Lender previously entered into a certain Loan Agreement, dated as of May 15, 1990, pursuant to which Lender agreed to lend Borrower up to U.S. \$4,200,000 ("RPAC West Loan"). The RPAC West Loan is secured by, among other things, that certain Mortgage dated May 15, 1990 and recorded in the Office of the Cook County Recorder of Deeds as Document Number 90246745 ("RPAC West Mortgage"). The RPAC East Loan and the RPAC West Loan are sometimes collectively referred to herein as the "Loans". In addition to the RPAC East Mortgage and the RPAC West Mortgage, the Loans are evidenced and secured by the RPAC East Security Documents and the RPAC West Security Documents (as those terms are defined in the Consolidated Loan Agreement described in Recital D below - the RPAC East Mortgage and the RPAC West Mortgage and the other RPAC East Security Documents and RPAC West Security Documents, as hereafter renewed, extended, amended, modified, restated or supplemented, are collectively referred to herein as the "Loan Documents").

D. The Parties have entered into a Consolidated, Amended and Restated Loan Agreement of even date herewith by and among the Parties (the "Consolidated Loan Agreement"), pursuant to which the Loans have been consolidated, the maturity date thereof extended to October 8, 1995 and the other terms and provisions of the Loans have been modified in various respects. The Loans are now evidenced by a Substitute Note (as defined in the Consolidated Loan Agreement) of even date herewith made by Borrower payable to Lender.

E. The Parties desire to amend certain provisions of the Loan Documents as contemplated by the Consolidated Loan Agreement as provided below.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby covenant and agree as follows:

1. **Incorporation of Recitals and Exhibits.** The foregoing Recitals and all exhibits attached hereto are expressly incorporated in, and a material part of, this Agreement and shall also be deemed incorporated in and a material part of the Loan Documents.

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2. **Modifications of Defined Terms.** Unless the specific context of a particular reference or references in the Loan Documents otherwise requires, each and every one of the Loan Documents is hereby amended as follows: (a) all references to the Loan, the RPAC East Facility or the RPAC West Facility shall hereafter mean and be deemed to refer to the Loans; (b) all references to the Note, the RPAC East Note or the RPAC West Note shall hereafter mean and be deemed to refer to the Substitute Note; (c) all references to the Loan Agreement, the RPAC East Loan Agreement or the RPAC West Loan Agreement shall hereafter mean and be deemed to refer to the Consolidated Loan Agreement; (d) all references to the Loan Documents, the Security Documents, the RPAC East Security Documents, the RPAC West Security Documents, the RPAC East Documents, the RPAC East Loan Documents, the RPAC West Documents or the RPAC West Loan Documents shall hereafter mean and be deemed to refer to the Loan Documents; (e) all references to the Loan Documents or to any particular Loan Document shall mean such documents or document as they or it may have been, are hereby or may hereafter be amended, modified, supplemented or restated from time to time; and (g) all references to the "Default Rate" shall mean the Default Rate as defined in Section 4.3 of the Consolidated Loan Agreement; all references to "U.S. \$4,200,000" are changed to "U.S. \$14,042,479.12;" and all references to "U.S. \$19,800,000" are changed to "U.S. \$14,042,479.12".

3. **Modification of the RPAC East Mortgage.**

(a) Section 1(a) of the RPAC East Mortgage is hereby amended by deleting "NINETEEN MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$19,800,000)" and substituting "FOURTEEN MILLION FORTY-TWO THOUSAND FOUR HUNDRED SEVENTY-NINE AND 12/100 UNITED STATES DOLLARS (U.S. \$14,042,479.12)".

(b) Section 1(b) of the RPAC East Mortgage is hereby deleted in its entirety.

(c) The following paragraph is hereby added at the end of Section 3 the RPAC East Mortgage:

Mortgagor covenants and agrees to deposit, at the request of Mortgagee, at such place as Mortgagee may from time to time in writing appoint, commencing on November 1, 1992 and continuing on the first day of each month thereafter until the Obligations are fully paid, satisfied, performed and discharged, a sum equal to one-twelfth (1/12) of the "Taxes" (as hereinafter defined) for the last ascertainable year on the Premises. Mortgagor, concurrently with making its first deposit, will also deposit with Mortgagee an amount, based upon the Taxes so ascertainable or estimated by Mortgagee, as the case may be, for Taxes on the Premises, on the accrual basis, for the period from January 1, immediately succeeding the year for which all Taxes have been paid, to and including the date of the first deposit in this Section hereinabove mentioned. Such deposits are to be held without any allowance of interest and are to be

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used for the payment of Taxes on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such Taxes for any year when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of demand therefor (but in no event less than thirty (30) days prior to the last day in which the same may be paid without interest or penalty), deposit such additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from Mortgagee's own funds. For purposes of this Section, "Taxes" shall mean all general real estate taxes, special taxes, special assessments, water charges, sewer service charges and other charges levied, imposed or assessed against the Premises from time to time.

(d) ~~Section 5(b)~~ of the RPAC East Mortgage is hereby deleted in its entirety.

(e) ~~Section 12~~ of the RPAC East Mortgage is hereby deleted in its entirety and the following is hereby substituted therefor:

Default

12. The following shall be a default ("Mortgage Default") under this Mortgage: if (a) any payment of principal or interest due under or with respect to any of the Obligations, or any other payment due in accordance with the terms of this Mortgage, is not paid when the same is due and payable; or (b) any other of the covenants, agreements or conditions, hereinbefore or hereinafter contained, required to be kept or performed or observed by Mortgagor in this Mortgage, are not observed or performed, and such non-performance or non-observance is not remedied by Mortgagor within five (5) days after notice from Mortgagee to Mortgagor; or (c) any representation made by Mortgagor contained in this Mortgage shall be false as of the date when made in any material respect; or (d) any breach of any representations, agreements, terms or conditions contained in, or the occurrence of a default or event of default under, the Consolidated Loan Agreement or any other Loan Document and such default or breach shall not have been cured within the applicable grace period provided therefor, if any ("Loan Agreement Default"); or (e) any default or event of default not otherwise described in this Section 12, shall have occurred under or with respect to any of the Loan Documents, and such default shall not have been cured within the applicable grace period provided therefor, if any.

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All cure periods under this Section 12 shall run concurrently with any cure period allowed with respect to any default under the Consolidated Loan Agreement or any of the other Loan Documents.

(f) The following provisions are hereby added between the first and second paragraphs of Section 13 of the RPAC East Mortgage:

Without limitation on the foregoing, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Illinois Mortgage Foreclosure Act, Ill. Rev. Stat., Ch. 110, Sec. 15-1101 et seq. ("Act"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to (collectively, "Protective Advances"):

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild any improvements upon the Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(b) payments by Mortgagee of: (i) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) attorneys' fees and other expenses incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504 (d)(2) and 15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in the preparation for

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the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

(f) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Act;

(g) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if any interest in the Premises is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintenance of existing insurance in effect at the time any receiver or mortgagee takes possession of the Premises imposed by subsection (c)(1) of Section 15-1704 of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the Loan Agreement; and (viii) pursuant to any lease or other agreement for occupancy of the Premises.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent

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with the provisions of the Act, apply to and be included in: (i) determination of the amount of indebtedness secured by this Mortgage at any time; (ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose; (iii) if right of redemption has not been waived by this Mortgage, computation of amount required to redeem, pursuant to subsections (d)(2) and (e) of Section 15-1603 of the Act; (iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (v) application of income in the hands of any receiver or Mortgagee in possession; and (vi) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of Sections 15-1508 and Section 15-1511 of the Act.

(g) Section 20 of the RPAC East Mortgage is hereby amended by deleting the last two sentences and substituting the following:

"Mortgagee may retain the remainder of such award in payment or reduction of the Loans in such order as Mortgagee shall determine, whether the Loans are due or not, and any excess after payment in full of the Loans and all sums due hereunder, shall be returned to Mortgagor."

(h) Section 38 of the RPAC East Mortgage is hereby amended by deleting "\$19,800,000" and substituting "\$14,042,479.12."

(i) Section 39 of the RPAC East Mortgage entitled "Construction Mortgage" is hereby deleted in its entirety.

(j) The following provisions are hereby added to the RPAC East Mortgage as Section 42 thereof:

Maximum Amount of Indebtedness Secured.

42. The maximum amount of principal, interest and other indebtedness (now or hereafter owed) secured by this Mortgage is three times the maximum amount of the Loans, or Forty-Two Million One Hundred Twenty-Seven Thousand Four Hundred Thirty-Seven and 36/100 U.S. Dollars (U.S. \$42,127,437.36).

(k) The following provisions are hereby added to the RPAC East Mortgage as Section 43 thereof:

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Waiver of Right of Reinstatement

43. Mortgagor acknowledges that Mortgagee has, without any obligation to do so, allowed Mortgagor to reinstate the Loans following Mortgagee's valid acceleration thereof the Loans. Mortgagor acknowledges and agrees that Mortgagor shall have no further right of reinstatement with respect to the Loans and Mortgagor hereby waives any and all rights of reinstatement with respect to the Loans, whether under Section 15-1602 of the Act or otherwise.

4. Modification of the RPAC West Mortgage.

(a) Section 1(a) of the RPAC West Mortgage is hereby amended by deleting "FOUR MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$4,200,000)" and substituting "FOURTEEN MILLION FORTY-TWO THOUSAND FOUR HUNDRED SEVENTY-NINE AND 12/100 UNITED STATES DOLLARS (U.S. \$14,042,479.12)".

(b) Section 2 of the RPAC West Mortgage is hereby amended by deleting the provisos at the end of Sections 2(a)(vii) and (viii) and all of Section 2(c).

(c) The following paragraph is hereby added as Section 3(c) of the RPAC West Mortgage:

(c) Mortgagor covenants and agrees to deposit, at the request of Mortgagee, at such place as Mortgagee may from time to time in writing appoint, commencing on November 1, 1992 and continuing on the first day of each month thereafter until the Obligations are fully paid, satisfied, performed and discharged, a sum equal to one-twelfth (1/12) of the "Taxes" (as hereinafter defined) for the last ascertainable year on the Premises. Mortgagor, concurrently with making its first deposit, will also deposit with Mortgagee an amount, based upon the Taxes so ascertainable or estimated by Mortgagee, as the case may be, for Taxes on the Premises, on the accrual basis, for the period from January 1, immediately succeeding the year for which all Taxes have been paid, to and including the date of the first deposit in this Section hereinabove mentioned. Such deposits are to be held without any allowance of interest and are to be used for the payment of Taxes on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such Taxes for any year when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of demand therefor (but in no event less than thirty (30) days prior to the last day in which the same may be paid without interest or penalty), deposit such additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from Mortgagee's own

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funds. For purposes of this Section, "Taxes" shall mean all general real estate taxes, special taxes, special assessments, water charges, sewer service charges and other charges levied, imposed or assessed against the Premises from time to time.

(d) The first paragraph of Section 5 of the RPAC West Mortgage is hereby deleted in its entirety and the provisions of Section 5(a) of the RPAC East Mortgage are hereby substituted therefor.

(e) Section 12 of the RPAC West Mortgage is hereby deleted in its entirety and the following is hereby substituted therefor:

Default

12. The following shall be a default ("Mortgage Default") under this Mortgage: if (a) any payment of principal or interest due under or with respect to any of the Obligations, or any other payment due in accordance with the terms of this Mortgage, is not paid when the same is due and payable; or (b) any other of the covenants, agreements or conditions, hereinbefore or hereinafter contained, required to be kept or performed or observed by Mortgagor in this Mortgage, are not observed or performed, and such non-performance or non-observance is not remedied by Mortgagor within five (5) days after notice from Mortgagee to Mortgagor; or (c) any representation made by Mortgagor contained in this Mortgage shall be false as of the date when made in any material respect; or (d) any breach of any representations, agreements, terms or conditions contained in, or the occurrence of a default or event of default under, the Consolidated Loan Agreement or any other Loan Document and such default or breach shall not have been cured within the applicable grace period provided therefor, if any ("Loan Agreement Default"); or (e) any default or event of default not otherwise described in this Section 12 shall have occurred under or with respect to any of the Loan Documents, and such default shall not have been cured within the applicable grace period provided thereof, if any. All cure periods under this Section 12 shall run concurrently with any cure period allowed with respect to any default under the Consolidated Loan Agreement or any of the other Loan Documents.

(f) The following provisions are hereby added between the first and second paragraph of Section 13 of the RPAC West Mortgage:

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Without limitation on the foregoing, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Illinois Mortgage Foreclosure Act, Ill. Rev. Stat., Ch. 110, Sec. 15-1101 et seq. ("Act"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to (collectively, "Protective Advances"):

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild any improvements upon the Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(b) payments by Mortgagee of: (i) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) attorneys' fees and other expenses incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504 (d)(2) and 15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

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(f) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Act;

(g) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if any interest in the Premises is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintenance of existing insurance in effect at the time any receiver or mortgagee takes possession of the Premises imposed by subsection (c)(1) of Section 15-1704 of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the Loan Agreement; and (viii) pursuant to any lease or other agreement for occupancy of the Premises.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (i) determination of the amount of indebtedness secured by this Mortgage at any time; (ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose; (iii) if right of redemption has not been waived by this

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5. **Modification of Various Cure Periods.** Certain of the Loan Documents which originally evidenced and secured the RPAC East Loan contain a thirty (30) day cure period (which cure period may, under certain circumstances, be extended for up to an additional sixty (60) days) with respect to certain defaults thereunder. Notwithstanding anything contained in the Loan Documents to the contrary, no grace, cure or notice period under any Loan Document shall extend beyond five (5) days after written notice thereof from the Lender. All grace, cure and notice periods, if any, under any Loan Document shall run concurrently with any grace, cure or notice period allowed with respect to any default under any other Loan Document.

6. **Modification of Security Agreements.**

(a) **Section 5(h)** of that certain Security Agreement dated as of June 6, 1991 between Beneficiary, Trust No. 111928 and Lender is hereby deleted in its entirety and the following is hereby substituted therefor:

(i) **Insurance.** Assignor shall keep all of the Collateral fully insured in accordance with the provisions of the Consolidated Loan Agreement and comply fully with all of the requirements thereof and all insured losses shall be adjusted and applied in accordance with the provisions of the RPAC East Mortgage, as amended.

(b) **Section 6** of that certain Security Agreement dated as of May 1, 1990 between Beneficiary, Trust No. 115432 and Lender is hereby deleted in its entirety and the following is hereby substituted therefor:

6. Assignor shall keep all of the Collateral fully insured in accordance with the provisions of the Consolidated Loan Agreement and comply fully with all of the requirements thereof and all insured losses shall be adjusted and applied in accordance with the provisions of the RPAC West Mortgage, as amended.

(c) Beneficiary and Land Trust hereby grant, transfer and assign to Lender all of their respective right, title and interest in and to that certain Restated Development Agreement and Development Plan dated as of August 5, 1992 by and between the Beneficiary and the Village of Rosemont, an Illinois municipal corporation (as the same may be amended from time to time, the "Redevelopment Agreement") and any and all products and proceeds thereof. In furtherance thereof, the definition of the "Development Agreement" in the Development Assignment (as hereinafter defined) shall also be deemed to include the Redevelopment Agreement and the definition of the "Premises" in the RPAC East Mortgage and in the RPAC West Mortgage shall also be deemed to include the Redevelopment Agreement. Beneficiary and Land Trust shall execute and deliver to Lender any and all financing statements which as Lender may, from time to time, require relating to Lender's security interest in the Redevelopment Agreement. Any failure by Beneficiary to observe or perform any of its obligations under the Redevelopment Agreement which is not cured within any applicable cure period shall be deemed to constitute a Mortgage Default under the RPAC

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East Mortgage and under the RPAC West Mortgage and an Event of Default under the Development Assignment. For purposes hereof, "Development Assignment" means that certain Assignment of Development and Construction Documents dated as of June 6, 1991 from Beneficiary and Land Trust to Lender.

7. Relief from Automatic Stay.

(a) If the Borrower or the Premises shall ever become the subject of any bankruptcy or insolvency proceeding or the property of any bankruptcy or insolvency estate, then Borrower agrees that Lender shall immediately become entitled to obtain upon ex-parte application and without further notice or action of any kind, an order from the bankruptcy court having jurisdiction over the proceeding granting immediate relief from the automatic stay pursuant to Section 362 of the United States Bankruptcy Code ("Code") so as to permit Lender to foreclose upon the Premises and the interest of the Borrower therein and to exercise any and all other rights and remedies of Lender under the Loan Documents or under any other agreement or by statute or at law or in equity.

(b) As an alternative to the provisions of Section 7(a) above, Lender may (at its sole option) become entitled to obtain, upon ex-parte application and without further notice or action of any kind, an order from the bankruptcy court having jurisdiction over the proceeding described above granting immediate relief from the automatic stay pursuant to Section 362 of the Code if Borrower does not file a plan within the 120 day exclusive period provided by Section 1121(b) of the Code. Such relief shall permit Lender to foreclose upon the Premises and the interest of the Borrower therein and to exercise any and all other rights and remedies of Lender under the Loan Documents or under any other agreement or by statute or at law or in equity. Nothing contained in this Section 7(b) shall be construed as limiting the generality or efficacy of any of Lender's rights under Section 7(a) above.

(c) The provisions of this Section 7 are made by Borrower as a material inducement to Lender to enter into this Agreement and shall survive the execution, delivery, recording and performance of this Agreement.

8. Miscellaneous.

(a) Except as amended hereby or by another instrument in writing signed by all of the Parties, the Loan Documents are and shall remain in full force and effect, unmodified, and are hereby ratified and reaffirmed.

(b) The necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, trusts or individuals, men or women, the singular or the plural, as the case may require, shall in all cases be assumed as though in each case fully expressed.

(c) The Consolidated Loan Agreement, the Substitute Note and the Loan Documents, as amended hereby, and the other agreements and instruments

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executed and delivered in connection therewith, as more particularly described in the Consolidated Loan Agreement, as each of them may be renewed, extended, amended, modified, supplemented or restated from time to time in writing, constitute the entire agreement of the Parties with respect to the Loans, and all prior discussions, negotiations, documents, drafts and agreements are merged herein and therein and are superseded hereby and thereby.

(d) Section headings used herein are for convenience only and shall not be used to interpret any term hereof.

(e) The Agreement shall be governed by the internal laws of the State of Illinois without giving effect to Illinois choice of laws principles.

(f) This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one agreement.

9. **Trustee's Exculpation.** This Agreement has been executed by LaSalle National Trust, N.A., not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and LaSalle National Trust, N.A. hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said LaSalle National Trust, N.A. personally to pay the Loans or any indebtedness accruing hereunder or to indemnify, hold harmless or reimburse Lender for any costs, claims, losses or damages of any nature, all such liability, if any, being expressly waived by Lender, and that so far as said Trustee personally is concerned, the Lender shall look solely to the Premises and any other property and collateral subject to the Loan Documents for the payment thereof, by the enforcement of the liens created by the Mortgage and the other Loan Documents; provided, however, nothing herein or in any exculpatory stamp affixed hereto by Trustee shall affect or limit the personal liability of the Beneficiary or Guarantors under any of the Loan Documents.

[This Space Left Intentionally Blank]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

LENDER:

BARCLAYS BANK PLC

By: Michael B. Nash
Name: Michael B. Nash
Title: Vice President

BORROWER:

BALMORAL RIVER PROPERTIES, an Illinois general partnership

By: **HAWTHORN-BALMORAL LIMITED PARTNERSHIP, an Illinois limited partnership**
Its: **General Partner**

By: **J.S.B. Corp., an Illinois corporation, its sole general partner**

By: _____
Name: _____
Title: _____

By: _____
JOSEPH S. BEALE, an Individual
Its: **General Partner**

By: **SIMON-BALMORAL DEVELOPERS LIMITED PARTNERSHIP, an Indiana limited partnership**
Its: **General Partner**

By: **Simon-Balmoral, Inc., its sole general partner**

By: _____
Name: _____
Title: _____

Being all of the partners of said Beneficiary

UNOFFICIAL COPY

9 2 7 1 8 1

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

LENDER:

BARCLAYS BANK PLC


By: _____
Name: _____
Title: _____


BORROWER:

BALMORAL RIVER PROPERTIES, an Illinois general partnership

By: **HAWTHORN-BALMORAL LIMITED PARTNERSHIP, an Illinois limited partnership**
Its: **General Partner**

By: **J.S.B. Corp., an Illinois corporation, its sole general partner**

By: 
Name: JOSEPH S. BEALE
Title: PRESIDENT

By: 
Name: JOSEPH S. BEALE, an individual
Its: **General Partner**

By: **SIMON-BALMORAL DEVELOPERS LIMITED PARTNERSHIP, an Indiana limited partnership**
Its: **General Partner**

By: **Simon-Balmoral, Inc., its sole general partner**

By: _____
Name: _____
Title: _____

Being all of the partners of said Beneficiary

[Signatures continued on next page]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

LENDER:

BARCLAYS BANK PLC

By: _____
Name: _____
Title: _____

BORROWER:

BALMORAL RIVER PROPERTIES, an Illinois general partnership

By: **HAWTHORN-BALMORAL LIMITED PARTNERSHIP**, an Illinois limited partnership
Its: General Partner

By: **J.S.B. Corp.**, an Illinois corporation, its sole general partner

By: _____
Name: _____
Title: _____

By: _____
JOSEPH S. BEALE, an individual
Its: General Partner

By: **SIMON-BALMORAL DEVELOPERS LIMITED PARTNERSHIP**, an Indiana limited partnership
Its: General Partner

By: **Simon-Balmoral, Inc.**, its sole general partner

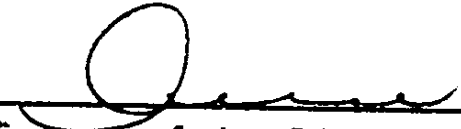
By: _____
Name: David Simon
Title: VICE PRESIDENT


Being all of the partners of said Beneficiary

[Signatures continued on next page]

UNOFFICIAL COPY

LaSALLE NATIONAL TRUST, N.A.,
not personally but solely as Trustee as
aforesaid

By: 
Name: Corinne Bar
Title:

Attest: 
Name: HAROLD A. STACK
Title: ASSISTANT SECRETARY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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EXHIBIT A-1

ALL OF LOT 3 (EXCEPT THE NORTH 410 FEET THEREOF, INCLUDING IN THIS EXCEPTION THE PORTION LYING IN BRYN MAWR AVENUE, ALSO EXCEPT THAT PORTION OF SAID LOT 3 WHICH LIES WEST OF A LINE 40 FEET EASTERLY OF, PARALLEL WITH AND MEASURED AT RIGHT ANGLES TO THE EASTERLY RIGHT OF WAY LINE OF THE MINNEAPOLIS, ST. PAUL AND SAULTE STE. MARIE RAILROAD; ALSO EXCEPT THE EAST 33 FEET THEREOF) IN FREDERICK JOSS' DIVISION OF THAT PART OF THE NORTH ¼ OF THE NORTH EAST ¼ OF SECTION 9, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, EASTERLY OF THE RIGHT OF WAY OF THE MINNEAPOLIS, ST. PAUL AND SAULTE STE. MARIE RAILROAD, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 12-09-200-061

Property Address: 5420 North Pearl Street
Rosemont, Illinois

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EXHIBIT A-2

LOT 2 IN RPAC-1 SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 10 AND THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 19, 1992 AS DOCUMENT NO. 9277469 IN COOK COUNTY, ILLINOIS.

Permanent Index Numbers: 12-10-100-014 (Affects part of the land)
12-10-100-007 (Affects part of the land and other property)
12-10-100-021 (Affects part of the land and other property)
12-10-100-107 (Affects part of the land and other property)

Property Address: Vacant Land on River Road, South of Balmoral Avenue,
Rosemont, Illinois

UNOFFICIAL COPY

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOSEPH S. BEALE, individually, as a general partner of BALMORAL RIVER PROPERTIES and as the President of J.S.B. CORP., the managing general partner of HAWTHORN-BALMORAL LIMITED PARTNERSHIP, a general partner of BALMORAL RIVER PROPERTIES, 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 said instrument as such officer of corporation, as his own free and voluntary act and as the free and voluntary act of such corporation on behalf of BALMORAL RIVER PROPERTIES, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of _____, 1992.

NOTARY PUBLIC

My Commission Expires:

STATE OF INDIANA)
) SS
COUNTY OF MARION)

I, Betsy Alting, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David Simon, a Vice President of SIMON-BALMORAL, INC., the managing general partner of BALMORAL RIVER PROPERTIES, 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 said instrument as such officer, as his own free and voluntary act and as the free and voluntary act of such corporation on behalf of BALMORAL RIVER PROPERTIES, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 8th day of October, 1992.

Betsy A. Alting
NOTARY PUBLIC

My Commission Expires: _____
County of Residence: Johnson
My Commission Expires June 24, 1996

92781315

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, HARRIET DEL..., a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ... a ... ASSISTANT SECRETARY of LaSALLE NATIONAL TRUST, N.A., not personally but solely as Trustee under Trust Agreement dated December 23, 1986 and known as Trust No. 111928, 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 said instrument as such officer, as his own free and voluntary act and as the free and voluntary act of such corporation on behalf of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14th day of OCTOBER 1992.

[Signature]
NOTARY PUBLIC

My Commission Expires:

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____ a _____ of BARCLAYS BANK PLC, 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 said instrument as such officer, as his own free and voluntary act and as the free and voluntary act of such corporation on behalf of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____ 1992.

NOTARY PUBLIC
My Commission Expires:

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UNOFFICIAL COPY

STATE OF ILLINOIS)
COUNTY OF COOK) SS

9 / 1 1 1 1

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, a _____ of LaSALLE NATIONAL TRUST, N.A., not personally but solely as Trustee under Trust Agreement dated December 23, 1986 and known as Trust No. 111928, 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 said instrument as such officer, as his own free and voluntary act and as the free and voluntary act of such corporation on behalf of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 1992.

NOTARY PUBLIC

My Commission Expires:

STATE OF ILLINOIS)
COUNTY OF COOK) SS

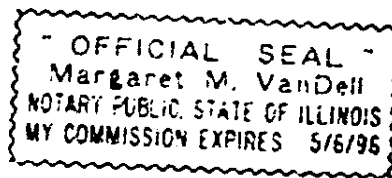
I, MARGARET M. VANDELL, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael B. Bach, a Vice President of BARCLAYS BANK PLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as such officer, as his own free and voluntary act and as the free and voluntary act of such corporation on behalf of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 9th day of October, 1992.

Margaret M. Vandell
NOTARY PUBLIC

My Commission Expires:

5-6-96



92781315