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This Document Prepared By
and After Recording Return to:

94583003

William H. Knopp, Esq.
Katten Muchin & Zavis
525 West Monroe Street
Chicago, Illinois 60661-3693

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COOK COUNTY RECORDER

THIRD MODIFICATION AGREEMENT

This **THIRD MODIFICATION AGREEMENT** (this "Agreement") is made as of the 1st day of June, 1994, by and among **AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO**, not personally, but solely as Trustee under Trust Agreement dated May 6, 1982 and known as Trust No. 55185 ("Trustee"), whose mailing address is 33 North LaSalle Street, Chicago, Illinois 60690, **MALLERS-CHICAGO LIMITED PARTNERSHIP**, an Illinois limited partnership ("Beneficiary"), whose mailing address is 105 West Adams Street, Chicago, Illinois 60603. Trustee and Beneficiary are sometimes hereinafter collectively referred to as "Borrower".

W I T N E S S E T H:

WHEREAS, Lender has heretofore made a \$17,737,500 loan (as modified to date and as modified hereby, the "Loan") to Borrower relating to certain real property located in Cook County, Illinois and commonly known as The Mallers Building (the "Property"), which Loan was made pursuant to the provisions of that certain Standing Mortgage Loan Commitment dated September 14, 1988, and accepted by Borrower on September 20, 1988 (the "Commitment"); and

WHEREAS, to evidence the Loan, Borrower executed and delivered to Lender a Promissory Note dated November 21, 1988, in the principal amount of \$17,737,500, payable to the order of Lender, as payee, as amended and restated by an Amended and Restated Promissory Note dated April 1, 1992 in the principal amount of \$19,486,863 (the "Existing Note"); and

WHEREAS, the Existing Note was secured by, among other things, (i) a Mortgage, Security Agreement and Assignment of Leases and Rents dated as of November 21, 1988, made by Borrower, as mortgagor, to Lender, as mortgagee, and recorded on November 22, 1988 in the Office of the Recorder of Cook County, Illinois (the "Recorder's Office"), as Document Number 88539390, encumbering the Property (as modified by Amendment to Mortgage, Security Agreement and Assignment of Leases and Rents dated as of April 27, 1992 and recorded on April 30, 1992 in the Recorder's Office as Document Number 92296073, and by a Second Modification of Note and Other Loan Documents dated as of August 31, 1993 and recorded on

Please return to: Mike Weihman
Ticor Title Insurance
203 N. LaSalle, Suite 1400
Chicago, IL 60601

Re: *21040-14*



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Box 15

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September 21, 1993 in the Recorder's Office as Document Number 93753148, the "Mortgage"), (ii) an Assignment of Leases and Rents dated as of November 22, 1988 made by Borrower, as assignor, to Lender, as assignee, and recorded on November 22, 1988 in the Recorder's Office as Document Number 88539391 (the "Assignment"), (iii) among other UCC Financing Statements, a UCC Financing Statement made by Trustee, as debtor, to Lender, as secured party, recorded on November 22, 1988 in the Recorder's Office as Document Number 88U-28828 and a UCC Financing Statement made by Beneficiary, as debtor, to Lender, as secured party, recorded on November 22, 1988 in the Recorder's Office as Document Number 88U-28829 (collectively, the "Financing Statements"), (iv) an Elevator Holdback Agreement dated as of November 21, 1988, executed by Borrower and Lender (the "Elevator Agreement"), (v) an Asbestos Holdback Agreement dated as of November 21, 1988, executed by Borrower and Lender (the "Asbestos Agreement"), (vi) a Repair Holdback Agreement dated as of December 21, 1988, executed by Borrower and Lender (the "Repair Agreement") which Elevator Agreement, Asbestos Agreement, and Repair Agreement were modified, amended and restated by a Loan Holdback and Disbursement Agreement dated as of April 27, 1992 by and between Borrower and Lender as amended by the Amended and Restated Loan Holdback and Disbursement Agreement as of even date herewith by and between Borrower and Lender (the "Restated Disbursement Agreement"), (vii) a Modification Agreement dated as of April 27, 1992 by and between Borrower and Lender (the "First Modification"), and (viii) a Second Modification of Note and Other Loan Documents dated as of August 31, 1993 by and between Borrower and Lender (the "Second Modification") (the "Senior Note," the "Junior Note," the "Accrual Note" (each as hereinafter defined), the Mortgage, the Assignment, the Financing Statements, the Restated Disbursement Agreement, the First Modification, the Second Modification, and this Agreement, together with all other documents now or hereafter evidencing or securing the Loan, are hereinafter collectively referred to as the "Loan Documents");

WHEREAS, in the absence of this Agreement, the gross income generated from the Property may become insufficient to pay all operating expenses and the debt service payments required under the Existing Note; and

WHEREAS, the Property is in need of certain capital improvements and tenant improvements to become competitive in the market place; and

WHEREAS, Borrower has advised Lender that it is unable to provide the equity infusion necessary to perform said capital improvements and tenant improvements; and

WHEREAS, Borrower has requested that Lender (i) extend the maturity of the Loan and restate the Existing Note in accordance with the terms of the Second Amended and Restated Promissory Note of even date herewith from Borrower to the order of Lender in the principal amount of \$14,000,000 (including \$2,000,000.00 held in reserve for the payment of certain expenses in accordance with the

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Restated Holdback Agreement) (the "Senior Note"), in accordance with the Junior Promissory Note of even date herewith from Borrower to the order of Lender in the principal amount of \$2,675,000.00, (the "Junior Note"), and in accordance with the Accrual Promissory Note of even date herewith from Borrower to the order of Lender in the principal amount of \$4,025,000 (the "Accrual Note") (ii) eliminate the "Accrued Interest" (as defined in the Existing Note), (iii) increase the maximum principal amount of the Loan, as evidenced by this Note, the Junior Note and the Accrual Note, to \$20,700,000.00, (iv) establish a tenant improvements, leasing commissions and capital improvements reserve in the amount of \$2,000,000 in accordance with the terms and conditions of the Restated Disbursement Agreement, and (v) otherwise modify the terms and conditions of the Loan Documents in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, Lender has agreed to Borrower's requests in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the recitals set forth above, the covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties, Borrower and Lender do hereby agree as follows:

1. Preambles. The preambles to this Agreement are fully incorporated herein by this reference thereto with the same force and effect as though restated herein.

2. Defined Terms. To the extent not otherwise defined herein to the contrary, all terms and phrases used in this Agreement shall have the respective meanings ascribed to them in the Commitment, the Senior Note, the Junior Note, the Mortgage and the other Loan Documents, as modified hereby.

3. Ownership. Trustee represents to Lender that it is the owner in fee simple of the Mortgaged Property, and Beneficiary warrants and represents to Lender that Beneficiary is the owner of one hundred percent (100%) of the beneficial interest in Trustee, subject to a collateral assignment of beneficial interest in favor of Lender. Trustee represents to Lender, and Beneficiary warrants and represents to Lender, that each has the power and authority to execute this Agreement without the joinder of any other person or entity, other than the consent of Lender to the letter of direction directing Trustee to execute this Agreement.

4. Outstanding Principal Balance and Accrued Interest/Disbursement of Additional Funds. Borrower acknowledges that the outstanding principal balance under the Existing Note as of May 31, 1994 is \$18,682,007.78, including Accrued Interest. On the "Effective Date" (as hereinafter defined), Lender shall reserve additional funds in the aggregate amount of \$2,000,000 (the "Additional Funds") to or for the benefit of Borrower, as additional loan proceeds, in accordance with the terms and conditions of that certain Amended and Restated Loan Holdback and

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Disbursement Agreement of even date herewith (the "Restated Disbursement Agreement"). The Additional Funds shall be used to create the "Holdback Reserve" (as defined in the Restated Disbursement Agreement) of \$2,000,000. Borrower acknowledges and agrees that the net effect of the Senior Note, Junior Note, Accrual Note and Restated Disbursement Agreement results in a new maximum Loan amount, as evidenced by the Senior Note, the Junior Note, and the Accrual Note of \$20,700,000.00.

5. Elimination of Interest Accrual; Further Disbursement. Borrower acknowledges and agrees that the "Maximum Interest Accrual" (as defined in the Existing Note) are eliminated by the Senior Note, the Junior Note and the Accrual Note. Borrower further acknowledges and agrees that except with respect to disbursements from the Tenant Improvements and Leasing Commission Reserve in accordance with the terms and conditions of the Restated Disbursement Agreement, Lender shall have no obligation to disburse any additional monies to Borrower.

6. Modification of Mortgage. The Mortgage is hereby modified as follows:

(a) All references in the Mortgage, either in English or Arabic form, to the principal amount of \$19,846,863.00 are hereby deleted and substituted in lieu thereof are corresponding references to the principal amount of \$20,700,000.00.

(b) All references in the Mortgage to the Existing Note are hereby deleted and substituted in lieu thereof shall be corresponding references to the Senior Note, the Junior Note and the Accrual Note.

(c) All references in the Mortgage to the Maturity Date of November 30, 1995 are hereby deleted and substituted in lieu thereof shall be corresponding references to the "Maturity Date" as defined in the Senior Note, the Junior Note and the Accrual Note.

(d) The term "Indebtedness" in the Mortgage shall be deemed to include indebtedness evidenced by the Senior Note, the Junior Note and the Accrual Note, and the number "\$35,500,000.00" in the fifteenth (15th) line of page 5 of the Mortgage is hereby deleted and substituted in lieu thereof is the number "\$45,000,000.00"

7. Modification of Manager's Agreement, Subordination and Consent to Assignment. The Manager's Agreement, Subordination and Consent to Assignment dated as of November 21, 1988 from Mellers-Chicago Management Co., Inc. ("MCMC") in favor of Lender is hereby modified by deleting Paragraph 3 thereof and by substituting in lieu thereof the following new Paragraph 3:

"3. Manager may receive compensation for services rendered under the Contract not in excess of three and one-half percent (3.5%) of the gross income of the Property. Manager agrees that notwithstanding anything to the contrary

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in the Contract or in any other agreement, document or instrument between Manager and Borrower, Manager may receive leasing commissions not in excess of seven percent (7%) of the rent payable under the first year of any lease with respect to which Manager has acted as broker or agent, plus two percent (2%) of the rent payable thereunder after the first year, and Manager shall defer all such leasing commissions until all amounts evidenced by the Senior Note and the Junior Note (excluding the Release Fee under the Accrual Note) have been paid in full. Manager may receive a construction management fee not in excess of seven percent (7%) of the amount expended and reimbursed in accordance with the Restated Disbursement Agreement.

8. Modification of Loan Documents. The Loan Documents are hereby modified as follows:

(a) The maximum principal amount of the Loan shall be increased from \$19,846,863.00 to \$20,700,000.00, as evidenced by the Senior Note, the Junior Note and the Accrual Note. All references contained in the Commitment, or in any of the other Loan Documents to a note or to a loan in the principal amount of \$19,846,863.00, either in English or Arabic form, shall be deleted, and substituted in lieu thereof shall be corresponding references to a loan in the principal amount of \$20,700,000.00. At no time shall Lender be obligated to make disbursements to or for the benefit of Borrower in an amount greater than \$20,700,000.00.

(b) All references in any of the Loan Documents to the Existing Note are hereby deleted and substituted in lieu thereof shall be corresponding references to the Senior Note, Junior Note and the Accrual Note.

(c) All references in any of the Loan Documents to the Release Fee shall be deemed to refer to the "Release Fee" as defined in the Accrual Note.

(d) The Maximum Interest Accrual (or the maximum Accrued Interest, as the case may be) under the Loan shall be eliminated. All references contained in the Loan Documents to the Maximum Interest Accrual or to a maximum Accrued Interest in any amount are hereby deleted: and

(e) All references in any of the Loan Documents to the party and address to whom copies of notices should be sent in the event notice is given to Borrower and in addition to such notices sent to Borrower are hereby deleted and the following new party and address is hereby substituted therefor:

"Shefsky & Froelich Ltd.
444 North Michigan Avenue
24th Floor
Chicago, Illinois 60611
Attention: Bruce L. Boruszak, Esq."

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9. Conditions Precedent to Effective Date. This Agreement shall become effective only upon satisfaction of the following conditions precedent, all to the satisfaction of Lender:

(a) Borrower shall have paid to Lender the full amount of the "Costs" (as hereinafter defined) at closing, which shall be paid by adding the amount thereof to the Junior Note;

(b) Borrower shall have executed and delivered this Agreement and shall have caused Ticor Title Insurance Company ("Title Company") to record same;

(c) Borrower shall have executed and delivered the Restated Disbursement Agreement to Lender in the form attached hereto as Exhibit B;

(d) Borrower shall have executed and delivered the Senior Note in the form attached hereto as Exhibit C;

(e) Borrower shall have executed and delivered the Junior Note in the form attached hereto as Exhibit D;

(f) Borrower shall have executed and delivered the Accrual Note in the form attached hereto as Exhibit E;

(g) Borrower shall have caused the Title Company to deliver to Lender an endorsement (the "Title Endorsement") to Title Company's Loan Title Insurance Policy No. 238884 (the "Title Policy") issued to Lender, which endorsement shall reflect recordation of the this Agreement, increase the policy amount to \$20,700,000.00, and indicate that there are no new or unpermitted exceptions to title except as set forth in the Title Policy as of its original date of issuance, and leases entered into since the original date of issuance of the Title Policy, provided that said leases are shown as being subordinate to the Mortgage, or as otherwise accepted by Lender;

(h) Borrower shall have delivered a certified copy of the Rent Roll for the Property to Lender, which Rent Roll shall show a complete description of all security deposits relating to all leases and will separately indicate those security deposits actually held by Borrower, and shall deliver to Lender copies of all leases disclosed on said Rent Roll, if requested by Lender;

(i) Borrower shall deliver to Lender such evidence of authority of Trustee, Beneficiary and General Partner to execute and deliver this Agreement and the documents described herein as Lender may reasonably require, including, but not limited to, (i) a certified copy of the land trust agreement creating Trustee, (ii) a certified copy of the letter of direction authorizing Trustee to execute this Agreement and all documents contemplated hereby, (iii) a certified copy of Beneficiary's Partnership Agreement, (iv) a certified copy of Beneficiary's certificate of limited partnership, (v) a certified copy of Beneficiary's resolutions authorizing the execution of this Agreement and all documents contemplated hereby,

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if required by the terms of Beneficiary's Partnership Agreement, (vi) a certified copy of General Partner's resolutions authorizing the execution of this Agreement and all documents contemplated hereby, in its capacity as the general partner of Beneficiary, and (vii) a certificate of incumbency and a certificate of good standing for General Partner;

(j) Borrower shall modify the existing Management Agreement dated as of June 29, 1988 (the "Management Agreement") for the Mortgaged Property with MCMC to provide for the reduction in the entire management fee from five percent (5%) to three and one-half percent (3.5%) and for the deferral of the leasing commissions (but not management fees) due thereunder until all amounts evidenced by the Senior Note and the Junior Note (excluding the Release Fee under the Accrual Note) have been paid in full. The documentation relating to the aforesaid modification shall be acceptable to Lender and Lender's counsel in their reasonable discretion; and

(k) Borrower shall have delivered to Lender opinions from Trustee's, Borrower's and General Partner's counsel addressing matters of enforceability, validity, due authority, good standing and such other matters as Lender may reasonably require.

The date on which all of the conditions set forth in this Section have been satisfied (or waived in writing by Lender) is herein referred to as the "Effective Date" of this Agreement.

10. Establishment of Working Capital Reserve; Working Capital Account. (a) Borrower may maintain a working capital reserve for the Property (the "Working Capital Reserve") in an maximum amount up to \$50,000, for the payment of costs and expenses actually incurred in connection with the normal operation of the Property. The Working Capital Reserve may be maintained at a bank or other financial institution acceptable to lender, in Beneficiary's name (the "Working Capital Account"). Such account may bear a money market rate of interest, and all interest paid thereon shall be added to and become part of the Working Capital Reserve. The Working Capital Reserve may be funded from the gross revenue collected from or in connection with the Property and to the extent so funded shall be an expense deducted therefrom when calculating "Net Cash Flow" (as defined in the Junior Note and in the Accrual Note).

(b) Borrower may deposit into the Working Capital Account each month as an expense when determining Net Cash Flow a portion of the gross revenue collected from or in connection with the Property sufficient to fund and maintain the Working Capital Reserve up to the maximum amount of \$50,000. Any fundings out of the Working Capital Reserve in any month may be replenished in the next month from the gross revenue collected from or in connection with the Property.

11. Additional Financial Reporting. As soon as available, but no later than ninety (90) days after the end of each fiscal

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year, Beneficiary shall submit to Lender an annual operating statement of income and expenses for the Property for such year, certified by the president or chief financial officer of the general partner of Beneficiary, to the best of his knowledge, as being true, correct and complete in all material respects, showing, among other things, the total of all Net Cash Flow for such year (the "Annual Statements"). Borrower's failure to deliver the Annual Statements on or before the date provided herein shall constitute a default under this Agreement and the other Loan Documents.

12. Audit Requirement. One of the conditions precedent to the "Extension Option" (as defined in the Senior Note, the Junior Note and the Accrual Note) is that "Current Net Operating Income" (as hereinafter defined) from the Property be not less than \$1,600,000. In order to determine whether such condition has been met, Lender shall conduct an audit for the most recent month. For purposes hereof, "Current Net Operating Income" means "Revenue" less "Expenses" (as hereinafter defined). Borrower shall deliver or make available to Lender such information and documentation as Lender may require to conduct its audit, including without limitation, Borrower's books and records, certified rent rolls, certified copies of leases and certified financial statements.

"Revenue" means (a) all amounts (including reimbursements) collected from tenants of the Property (excluding nonrecurring income and non-property related income as determined by Lender in its reasonable discretion); provided, however, there shall be excluded from such calculation rent collected in excess of the initial rent due from each tenant in the initial year of such tenant's lease, plus an average of seven and one-half percent (7.5%) of the prior year's rent for each year of the term of such lease, plus (b) the amount of any buy-out, rent abatement or rent reduction made to induce a new tenant not yet or previously in possession of any portion of the Property to enter in to a lease at the Property, whether paid directly to such new tenant or to an existing tenant, but only to the extent such buy-out, rent abatement or rent concession is paid or applied during such tenant's initial lease term, plus (c) other income, not to exceed \$15,000, based upon collections for the previous twelve (12) months.

In determining Revenue, the occupancy factor utilized shall be the actual occupancy (in possession of the entire leased premises excluding income from tenants (i) that are thirty (30) days or more delinquent, (ii) that are in bankruptcy (even if current), and (iii) that have been thirty (30) days or more delinquent four (4) or more times during the past twelve (12) months, unless such tenant is not then delinquent and has been in possession of a portion of the Premises for two (2) years or more.

"Expenses" means actual and customary operating expenses on an accrual basis for the previous twelve (12) month period (as reasonably adjusted by Lender), including without limitation: (i) recurring expenses; (ii) real estate taxes; (iii) management fees

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(whether paid or not) in an amount of three and one-half percent (3.5%) of effective gross income; and (iv) a replacement reserve (whether reserved or not) of not less than \$0.10 per square foot of net rentable space.

13. Deferral of Leasing Commissions; Permitted Distributions; Construction Fee; Supervisory Fee.

(a) Beneficiary specifically acknowledges and agrees that all leasing commissions due and owing to MCMC pursuant to the Management Agreement for the period ending on the date that all indebtedness due and owing under the Senior Note and the Junior Note (excluding the Release Fee under the Accrual Note) has been paid in full shall be deferred.

(b) Provided no Event of Default has occurred and is continuing, Borrower may make distributions to its partners to the extent funds are available therefor from that portion of Net Cash Flow not required to be paid to Lender, without duplication, in accordance with the terms of the Junior Note and the Accrual Note.

(c) Borrower shall not pay to Beneficiary, Manager or any of Beneficiary's general or limited partners a construction management fee in excess of seven percent (7%) of the amount expended and reimbursed in accordance with the Restated Disbursement Agreement.

(d) Provided no Event of Default has occurred and is continuing under any of the Loan Documents, Borrower shall be entitled to receive a supervisory fee (the "Supervisory Fee") upon payment in full of all indebtedness due and owing under the Senior Note and the Junior Note (excluding the Release Fee under the Accrual Note) or upon execution and delivery to Lender of a deed-in-lieu of foreclosure in form and substance acceptable to Lender in its sole and absolute discretion, in the following amounts:

- (1) \$0.50 for each \$1.00 in Current Net Operating Income in excess of \$1,000,000, up to \$1,200,000; plus
- (2) \$0.75 for each \$1.00 in Current Net Operating Income in excess of \$1,200,000, up to \$1,400,000; plus
- (3) \$2.00 for each \$1.00 in Current Net Operating Income in excess of \$1,400,000.

In the event the Property does not achieve at least \$1,000,000 in Current Net Operating Income at such time, then Borrower shall receive no Supervisory Fee.

14. Reaffirmation. Borrower hereby reaffirms each and every covenant, condition, obligation and provision set forth in the Loan Documents, as modified hereby. Borrower hereby restates and reaffirms all of the warranties and representations contained in the Loan Documents, as modified hereby, as being true and correct as of the Effective Date.

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15. Event of Default. Borrower hereby acknowledges and agrees that a breach by Borrower of any term, provision, covenant or condition herein set forth or herein required of Borrower to be kept or performed, and which is not kept or performed pursuant to the terms hereof, shall constitute a default under the Loan Documents and shall constitute an Event of Default if said default is not cured within any applicable cure or grace period provided for herein or in the Loan Documents.

16. Execution of Other Documents. At Lender's request, Borrower hereby agrees to execute and deliver promptly to Lender such other documents as Lender, in its reasonable discretion, shall deem necessary or appropriate to evidence the loan modification transaction contemplated herein and/or to perfect or otherwise secure Lender's interest in the Property and the improvements located thereon.

17. References. All references herein to any of the Loan Documents shall be understood to be to the Loan Documents as modified hereby. All references in any of the Loan Documents to any one or more of the other Loan Documents shall hereafter be deemed to be to such document(s) as modified hereby.

18. No Defenses, Counterclaims and Release/Existing Defaults. Borrower hereby represents and warrants to, and covenants with, Lender that as of the date hereof, (a) Borrower has no defenses, offsets or counterclaims of any kind or nature whatsoever against Lender with respect to the Commitment or any of the other Loan Documents, or any action previously taken or not taken by Lender with respect thereto or with respect to any security interest, encumbrance, lien or collateral in connection therewith to secure the liabilities of Borrower, and (b) that Lender has fully performed all obligations to Borrower which it may have had or has on and of the date hereof. Without limiting the generality of the foregoing, Borrower, on its own behalf and on behalf of its representatives, partners, agents, employees, servants, officers, directors, shareholders, subsidiary, affiliated and related companies, successors and assigns (hereinafter collectively referred to as the "Borrowing Group") waives, releases and forever discharges Lender, and its officers, directors, subsidiary, affiliated and related companies, agents, servants, employees, shareholders, representatives, successors, assigns, attorneys, accountants, assets and properties, as the case may be (hereinafter referred to as the "Lender Group") from and against all manner of actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, obligations, liabilities, costs, expenses, losses, damages, judgments, executions, claims and demands, of whatsoever kind or nature, in law or in equity, whether known or unknown, whether or not concealed or hidden, arising out of or relating to any matter, cause or thing whatsoever, that any of the Borrowing Group, jointly or severally, may have had, or now have or that may subsequently accrue against Lender Group by reason of any matter or thing whatsoever through the date hereof arising out of or in any way

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connected to, directly, or indirectly, the Commitment and/or any of the other Loan Documents. Borrower acknowledges and agrees that Lender is specifically relying upon the representations, warranties, covenants and agreements contained herein and that such representations, warranties, covenants and agreements constitute a material inducement to enter into this Agreement.

Lender hereby warrants and represents to Borrower that, as of the Effective Date, to the best of its knowledge, no Event of Default exists, and Lender, effective as of the Effective Date, waives any and all Events of Default known by Lender to be existing under any of the Loan Documents as of the Effective Date; provided, however, that such waiver by Lender shall not constitute a waiver of any default under any of the Loan Documents, as modified hereby, occurring after the Effective Date.

19. Waiver of Automatic Stay. In consideration of Lender's execution of this Agreement, Borrower hereby stipulates and consents that upon an Event of Default under this Agreement, the Senior Note, the Junior Note, the Accrual Note or the other Loan Documents, and upon the filing of a petition under any section or chapter of Title 11 of the United States Code or similar law or statute by or against Borrower, any automatic stay or other injunction against Lender resulting from such filing shall be immediately and automatically modified and terminated with respect to Lender, without further notice, hearing or order of court, so that Lender may proceed to exercise its rights and remedies against the Property and any other property pledged to Lender to secure the Loan in accordance with applicable law as if no such filing had taken place. Borrower further agrees that it will not contest (a) any motion or application of Lender made in any court of competent jurisdiction seeking enforcement of this paragraph or otherwise seeking modification or termination of such automatic stay or other injunction in a manner consistent herewith or (b) any motion or application of Lender made in any court of competent jurisdiction seeking the appointment of a receiver. Borrower acknowledges and agrees that Lender is specifically relying upon the representations, warranties, covenants and agreements contained herein and that such representations, warranties, covenants and agreements constitute a material inducement to enter into this Agreement.

20. Costs. Borrower shall pay or cause to be paid to Lender all fees and expenses of Lender relating to the modification of the Loan, this Agreement and the transactions contemplated herein, including, without limitation, reasonable fees and expenses of Lender's counsel, inspection fees, recording charges, escrow charges, title charges and related expenses (the "Costs"). The amount of such Costs shall be added to the Junior Note.

21. No Custom. This Agreement shall not establish a custom or waive, limit or condition the rights and remedies of Lender under the Senior Note, the Junior Note, the Accrual Note or the other Loan Documents, all of which rights and remedies are expressly reserved, except as expressly provided in this Agreement.

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22. Representation by Counsel. Borrower hereby represents and warrants to Lender that throughout the negotiations, preparation and execution of this Agreement and the closing hereunder, Borrower has been represented by competent legal counsel of its own choosing and that this Agreement was entered into by the free will of Borrower and pursuant to arms-length negotiations.

23. Severability. If any provision of this Agreement or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Agreement and the application of such provision or provisions to the other parties and circumstances will not be affected thereby, the provisions of this Indemnity being severable in any such instance.

24. Full Force and Effect. Except as may be expressly set forth herein to the contrary, the Loan Documents remain unmodified and all other terms and conditions of the Loan Documents remain in full force and effect. Notwithstanding anything to the contrary stated herein, to the extent that the terms and conditions of this Agreement conflict with the terms and conditions of the Loan Documents, this Agreement shall control. Borrower and Lender expressly state, declare and acknowledge that this Agreement is intended only to modify Borrower's continuing obligations in the manner set forth herein, and is not intended as a novation.

25. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which shall be deemed one agreement.

26. Choice of Law. This Agreement shall be governed and construed under the laws of the State of Illinois, without regard to the conflict of laws principles.

27. Exculpation - Trustee. This Agreement is executed by American National Bank and Trust Company of Chicago, 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 said Trustee 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 the part of said Trustee personally to pay the indebtedness secured by the Senior Note, the Junior Note or the Accrual Note or any interest that may accrue thereon, or any indebtedness accruing thereunder, or to perform any covenant either express or implied herein contained, all such personal liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder, and that so far as said Trustee is personally concerned, the legal holder or holders of this Agreement and the owner or owners of any indebtedness accruing hereunder shall look to the Property or any other collateral securing such indebtedness by the enforcement against said Property or other collateral provided in the Senior Note, the Junior Note, the Accrual Note, this Agreement and any of the other Loan Documents.

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28. Exculpation. Notwithstanding anything to the contrary which may be contained herein, nothing contained herein or in any of the other Loan Documents, as modified by this Agreement shall be construed as creating any personal liability on the part of Beneficiary or Mellers-Chicago Corp., an Illinois corporation ("**General Partner**") with respect to the obligations of Beneficiary contained herein or therein, as modified by this Agreement (except that after a monetary default under any of the Loan Documents, as modified by this Agreement, or after acceleration of the Maker's Liabilities, Beneficiary and the General Partner shall be so personally liable to the extent of all gross income from the Property after the occurrence of such a monetary default and/or after Lender so accelerates Maker's Liabilities, which is not applied in payment of Maker's Liabilities or expended in connection with the operation of the Property in the ordinary course of business), and Lender agrees to look solely to the Property and to any other collateral heretofore, now or hereafter pledged by Beneficiary or any other party to secure the payment of the sums evidenced by the Senior Note, the Junior Note and the Accrual Note; provided, however, that nothing contained in this Section shall (i) limit or be construed to limit or impair the enforcement against the Property and/or any other security so mortgaged and/or pledged of any of the rights and remedies of Lender hereunder or under other Loan Documents, or (ii) release Beneficiary, General Partner, any then current general partner of Beneficiary, or Gary Z. Baxter (Beneficiary, General Partner, any such general partner and Gary Z. Baxter are hereinafter collectively referred to as the "**Principals**") from personal liability arising under Section 12 of the Mortgage, or arising from fraud, material misrepresentation or breach of trust from misapplication of funds (such as insurance proceeds or condemnation awards) which may come into the possession of Beneficiary or any of the other Principals, or arising from intentional or material waste to the Property, any such liability being with full recourse against Beneficiary and the other Principals. In addition, the nonrecourse provisions set forth in this Section shall be inapplicable, and Beneficiary shall be personally liable for payment of the Maker's Liabilities, in the event that (a) the covenants contained in Section 9 of the Mortgage are breached, (b) Beneficiary files any proceedings for any relief pursuant to the bankruptcy, insolvency or receivership laws of the United States or of any state, (c) Beneficiary fails to have dismissed any proceedings brought against Beneficiary by an individual or entity which is related to Beneficiary or any of the other Principals (an "**Affiliate**") for any relief pursuant to the bankruptcy, insolvency or receivership laws of the United States or of any state within thirty (30) days of the filing of such proceedings, (d) Beneficiary makes an assignment for the benefit of creditors, or (e) Beneficiary files an answer admitting insolvency or inability to pay its debts in any proceeding brought by an Affiliate.

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

BENEFICIARY:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee as aforesaid

By: [Signature]
Name: [Signature]
Its: [Signature] President

MALLERS-CHICAGO LIMITED PARTNERSHIP, an Illinois limited partnership

By: Mellers-Chicago Corp., an Illinois corporation, its general partner

By: [Signature]
Name: Gary L. Baxter
Its: President

LENDER:

HELLER FINANCIAL, INC., a Delaware corporation

By: [Signature]
Name: [Signature]
Its: AVP

MANAGER:

MALLERS-CHICAGO MANAGEMENT CO., INC., an Illinois corporation

By: [Signature]
Name: [Signature]
Its: President

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REAFFIRMATION

The undersigned hereby reaffirm each and every covenant, condition, obligation and provision on their part to be observed, satisfied or performed by them in the Loan Documents, as modified hereby, and including without limitation, the letter agreement dated as of April 27, 1992 from the undersigned to Lender. The undersigned hereby restate and reaffirm all of the warranties and representations made by them in the Loan Documents, as modified hereby, as being true and correct as of the Effective Date.

MALLERS-CHICAGO CORP., an Illinois corporation

By: _____

Name: Gary Z. Baxter

Its: President

GARY Z. BAXTER

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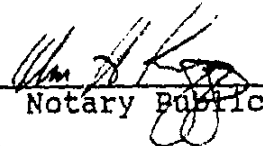
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STATE OF ILLINOIS)
)
) SS:
COUNTY OF COOK)

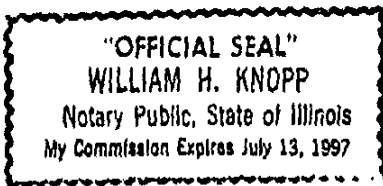
I, the undersigned, a Notary Public in and for the State and County, do hereby certify that Anita M. Lutkus, personally known to me to be the Trust Officer of American National Bank and Trust Company of Chicago, a national banking association, not personally but solely as trustee under Trust Agreement dated May 6, 1982 and known as Trust No. 55185, whose name is subscribed to the foregoing instrument appeared before me this day and acknowledged that she signed the foregoing instrument in such capacity and on behalf of such trustee as her free and voluntary act and deed and as the free and voluntary act and deed of such trustee for the uses and purposes therein set forth.

GIVEN under my hand and seal this 29th day of June 1994.



Notary Public

My Commission Expires:



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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

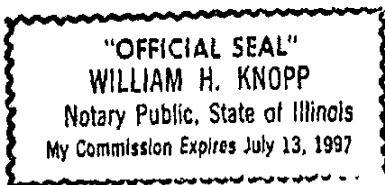
I, the undersigned, a Notary Public in and for the State and County, do hereby certify that Gary Z. Baxter, personally known to me to be the President of Mellers-Chicago Corp., an Illinois corporation and general partner of Mellers-Chicago Limited Partnership, an Illinois limited partnership, whose name is subscribed to the foregoing instrument, appeared before me this day and acknowledged that he signed the foregoing instrument in such capacity and on behalf of such corporation and limited partnership as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation and limited partnership for the uses and purposes therein set forth.

GIVEN under my hand and seal this 29th day of June, 1994.



Notary Public

My Commission Expires:



COOK County Clerk's Office

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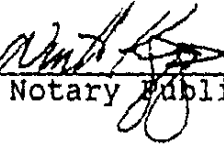
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STATE OF ILLINOIS)
)
COUNTY OF COOK) SS:

I, the undersigned, a Notary Public in and for the State and County, do hereby certify that Michael Huffman, personally known to me to be the Assistant Vice President of Heller Financial, Inc., a Delaware corporation, whose name is subscribed to the foregoing instrument, appeared before me this day and acknowledged that he signed the foregoing instrument in such capacity and on behalf of such corporation as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

GIVEN under my hand and seal this 29th day of June, 1994.



Notary Public

My Commission Expires:

"OFFICIAL SEAL"
WILLIAM H. KNOPP
Notary Public, State of Illinois
My Commission Expires July 13, 1997

Notary Public of Cook County Clerk's Office

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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

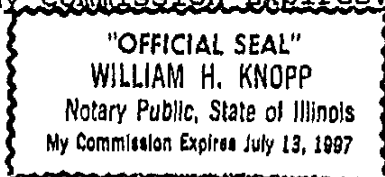
I, the undersigned, a Notary Public in and for the State and County, do hereby certify that Gary Z. Baxter, personally known to me to be the President of Mallers-Chicago Management Co., Inc., an Illinois corporation, whose name is subscribed to the foregoing instrument, appeared before me this day and acknowledged that he signed the foregoing instrument in such capacity and on behalf of such corporation as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

GIVEN under my hand and seal this 29th day of June, 1994.



Notary Public

My Commission Expires:



DOCUMENT #: CHG005 (00000-8359) 108305.1; DATE: 07/01/94/TIME: 10:38 =

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2014-01-01

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EXHIBIT A

Legal Description

Lots, 1, 2, 3, 4, 5 and 6 in Wright and Others Subdivision of Lots 2 and 3 in Block 1 in Fractional Section 15 Addition to Chicago in Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Tax Number: 17-15-101-017

Volume: 510

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EXHIBIT B

Amended and Restated Loan Holdback and Disbursement Agreement

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11/1/2015

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EXHIBIT C

Second Amended and Restated Promissory Note

Delivered to Lender But Not Recorded

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Property of Cook County Clerk's Office

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EXHIBIT D

Junior Promissory Note

Delivered to Lender But Not Recorded

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EXHIBIT E

Accrual Promissory Note

Delivered to Lender But Not Recorded

■ DOCUMENT #: CH0005 (38206-00018-4) 102385.6; DATE:07/01/94/TIME:11:33 ■

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