

PARKING EASEMENT AGREEMENT

THIS PARKING EASEMENT AGREEMENT (the "Agreement") is made as of this 27 day of August, 1995, by and between AMERICAN NATIONAL BANK AND TRUST COMPANY, not personally but solely as Trustee under Trust Agreement dated December 15, 1988, and known as Trust No. 107177-00 (hereinafter referred to as the "Office Trust" or the "Office Trustee"), and QUEBEC STREET INVESTMENTS, INC., a Delaware Corporation ("QSI")

The following recitals of fact are a material part of this Agreement:

A. The Office Trustee is the holder of legal title to a certain parcel of land in the Village of Schaumburg (the "Village"), County of Cook and State of Illinois which is legally described on Exhibit A attached hereto and made a part hereof and is commonly known as Embassy Plaza, 1931 Meacham Road, Schaumburg, Illinois (hereinafter referred to as the "Office Parcel");

B. QSI is the holder of legal title to a certain parcel of land in the Village of Schaumburg, County of Cook and State of Illinois, which lies north of and adjoins the Office Parcel and is legally described on Exhibit B attached hereto and made a part hereof and commonly known as 1939 Meacham Road, Schaumburg, Illinois (hereinafter referred to as the "Hotel Parcel"; the Office Parcel and the Hotel Parcel are hereinafter individually sometimes referred to as a "Parcel" and are hereinafter together referred to as the "Parcels");

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C. The Hotel Parcel has been developed and improved with a hotel, parking and related improvements. The Office Parcel has been developed and improved with an office building, parking and related improvements;

D. The Office Trustee wishes to grant and QSI wishes to receive an easement for parking upon the Office Parcel for the benefit of the Hotel Parcel, all as more fully set forth below;

E. QSI wishes to grant and the Office Trustee wishes to receive an easement for parking upon the Hotel Parcel for the benefit of the Office Parcel, all as more fully set forth below; and

F. The parties wish to make certain agreements regarding such easements.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

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## Section 1. Ingress Easement over the Office Parcel.

The Office Trustee hereby grants, gives and conveys to QSI and its successors and assigns, as an easement appurtenant to the Hotel Parcel, a non-exclusive, irrevocable and perpetual easement for the use of the Office Parcel Parking Area (as hereinafter defined) for the parking of motor vehicles, free of charge, by QSI, its beneficiaries, tenants, licensees, and property managers, and the invitees, employees, visitors, agents, and contractors of any of them, and for ingress and egress for motor vehicles and pedestrians to and from the Hotel Parcel from and to the Office Parcel Parking Area in order to use the Office Parcel Parking Area. The "Office Parcel Parking Area" shall be a part of the Office Parcel improved for parking as shown on Exhibit C attached hereto and made a part hereof; provided, in no event shall the Office Parcel Parking Area include those portions of Exhibit C marked "Exempt". No barrier, curb or other improvement shall be erected on the Office Parcel Parking Area which would prohibit or prevent ingress or egress to and from the Office Parcel Parking Area from and to the Hotel Parcel by motor vehicles or pedestrians.

## Section 2. Ingress and Egress Easement over the Hotel Parcel.

QSI hereby grants, gives and conveys to the Office Trustee and its successors and assigns, as an easement appurtenant to the Office Parcel, a non-exclusive, irrevocable and perpetual easement for the use of the Hotel Parcel Parking Area (as hereinafter defined) for the parking of motor vehicles, free of charge, by the Office Trustee, its beneficiaries, tenants, licensees and property managers, and the invitees, employees, visitors, agents and contractors of any of them, and for ingress and egress for motor vehicles and pedestrians to and from the Office Parcel from and to the Hotel Parcel Parking Area in order to use the Hotel Parking Area. The "Hotel Parcel Parking Area" shall be the portion of the Hotel Parcel improved for parking as shown on Exhibit D attached hereto and made a part hereof. The Office Parcel Parking Area and the Hotel Parcel Parking Area are hereinafter individually sometimes referred to as a "Parking Area" and are hereinafter together referred to as the "Parking Areas."

## Section 3. Division of Maintenance Obligations.

Each party hereto shall, at its own cost and expense except as hereinafter provided, repair and maintain the Parking Area located on the Parcel to which it holds title; repair and maintain adjoining landscaping, street lighting and signage located on such party's Parcel; stripe and re-stripe directional markers on such Parking Area; provide snow and ice removal from such Parking Area when necessary; and maintain and repair the

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same to keep such Parking Area in a clean, sightly, safe, unobstructed, good and usable condition. With regard to the foregoing, each party shall comply with any and all applicable federal, state and local zoning and other ordinances, statutes, guidelines, requirements and regulations applicable to the Parking Area located on the Parcel to which it holds title.

## **Section 4. Conduct and Coordination of Maintenance, Repair and Replacement.**

All maintenance and repair of the Parking Areas shall be made so as to interfere as little as practicable with the rights granted to the other party pursuant to this Agreement and with the operations on each Parcel of any of the owners thereof or their employees, agents, tenants, invitees or licensees. The parties shall use every effort to coordinate maintenance, repairs and replacement so that both Parking Areas shall not be obstructed at the same time. The parties shall conduct repaving of the Parking Areas so as to provide a smooth surface between the Parcels.

## **Section 5. Performance of Other Party's Obligations.**

In the event of an emergency requiring repair of either Parking Area in order to prevent an immediate and serious threat of property damage or injury to persons, if the party who is responsible for such repair does not undertake the same within a period of time which is reasonable under the circumstances or it does not appear that such party who is responsible will, or will be able to, undertake such repair, the other party may, at its option, perform such repair and pay any and all costs and charges associated therewith.

Subject to the provisions of Section 6 hereof, in the event either party hereto fails to maintain and repair the Parking Area on the Parcel to which it holds title, as such party is required to do pursuant to this Agreement, and such failure results in a material interference with the rights granted to the other party by this Agreement or with the use or operation of the other party's Parcel or the improvements located thereon from time to time, but does not result in an emergency, the other party may notify the party in default of such failure in writing. In the event the party in default fails to remedy such default within ten (10) days after receipt of such notice or, if such default cannot be cured within ten (10) days, in the event the party in default fails to commence the cure of such default within such ten (10) day period and to diligently pursue such cure to completion, the other party may, at its option, subject to the rights under Section 7 of the holder of any mortgage, perform the obligation which the party in default has failed to properly perform hereunder and pay any and all costs and charges associated therewith.

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In any event described in this Section 5, the performing party shall be entitled to recover from the other party the charges, fees, costs and expenses incurred by the performing party (including, if the other party is in default, reasonable attorneys' fees) in connection therewith. Such charges, fees, costs, expenses and interest shall be paid by the other party within ten (10) days after receipt of a statement thereof from the performing party. For the purposes hereof, the term "Default Rate of Interest" shall be the rate of interest from time to time announced by First National Bank of Chicago as its prime rate.

Each party which performs any maintenance or repair on the Parcel to which the other party holds title shall repair any damage caused by such action to the condition existing prior thereto, and if such party fails to do so, the party which holds title to such area shall have the right to effect such repairs, and the other party shall pay the cost thereof.

## Section 6. Force Majeure; Interruption of Services.

If either party hereto fails to perform in a timely manner any of the obligations to be performed by such party under this Agreement, and such failure is due in whole or in part to any strike, lockout, labor trouble, civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, casualties, acts of God, acts caused directly or indirectly by the other party (or such other party's employees, agents, licensees, invitees or contractors) or any other cause beyond the reasonable control of the non-performing party, then the non-performing party shall not be deemed in default hereunder as a result of such failure. The foregoing shall not excuse any failure to make any payment of money in a timely manner.

Neither party shall be liable in damages for any interruption of utility services to the Parcel to which the other party holds title which may arise out of or be occasioned by maintenance or repair of either Parking Area unless such interruption of service results from the wanton or willful misconduct of such party.

## Section 7. Mortgages.

Each party hereto agrees to give the holder of any mortgage to which the Parcel owned by the other party is subject, by personal delivery, commercial overnight delivery service, or registered or certified mail, a copy of any notice or claim of default served by the party giving such notice upon the other party, provided that prior to such notice the party giving such notice has been notified in writing of the name and address of such mortgage holder. Each party hereto further agrees that if the other party shall have failed to cure any default within the

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pertinent period permitted by Section 5 hereof, then the holder of any mortgage to which the Parcel owned by the other party is subject shall have an additional thirty (30) days within which to cure or correct such default (or if such default cannot be cured or corrected within that time, then such additional time as may be necessary if such holder of such mortgage has commenced within such thirty (30) days and is diligently pursuing the remedies or steps necessary to cure such default, including the time necessary to obtain possession if possession is necessary to cure or correct such default, but in no event more than an additional ninety (90) days).

Any mortgagee with respect to either Parcel shall not be responsible for any amounts incurred or becoming due under this Agreement prior to a foreclosure of its mortgage or a transfer of the interest of a party hereto in a Parcel to such mortgagee in lieu of foreclosure, and its liability hereunder in the event of such a foreclosure or transfer shall exist only so long as such mortgagee is the owner of a Parcel and shall not continue or survive after further transfer of ownership.

## **Section 8. Other Office Trustee Property.**

The easements herein granted to the Office Trustee are not appurtenant to any land that has common ownership or may hereafter come into common ownership with the Office Parcel.

## **Section 9. Other QSI Property.**

The easements herein granted to QSI are not appurtenant to any land that has common ownership or may hereafter come into common ownership with the Hotel Parcel.

## **Section 10. Separation of the Office Parcel.**

If the Office Parcel is hereafter divided into two (2) or more parts by separation of ownership, each party owning a part thereof shall enjoy the benefit of the easements granted to the Office Trustee herein.

## **Section 11. Separation of the Hotel Parcel.**

If the Hotel Parcel is hereafter divided into (2) two or more parts by separation of ownership, each party owning a part thereof shall enjoy the benefit of the easements granted to QSI herein.

## **Section 12. Covenants Running with the Land.**

All provisions of this Agreement, including the benefits and burdens set forth herein, shall run with the land and are binding



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upon and shall inure to the benefit of the successors and assigns of the parties hereto.

## Section 13. Transfer of Ownership.

Whenever a transfer of ownership of either Parcel occurs, the liability of the transferor for any breach of covenant occurring thereafter shall automatically terminate with respect to such transferor. Any transferee shall automatically assume and be bound by the burdens and obligations hereunder running with the land to the owner of the Parcel or portion thereof being transferred.

## Section 14. Interpretation.

The rule of strict construction does not apply to the grants herein. The grants herein shall be given a reasonable construction to carry out the intention of the parties hereto to confer a commercially usable right on each grantee.

## Section 15. Termination.

The grantee of any easement granted hereunder may terminate such easement by recording a release thereof with the Office of Recorder of Deeds of Cook County, Illinois, with directions for delivery of the same to the grantor of such easement at its address given pursuant hereto, whereupon all rights, duties and liabilities hereby created shall terminate as to such easement except for liabilities incurred hereunder prior to such termination. For convenience, such instrument may run to "the owner or owners of "the Office Parcel or the Hotel Parcel.

## Section 16. Insurance.

Each party shall carry at all times, with respect to the Parcel owned by it, commercial general public liability insurance, including contractual liability, in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence or such higher limit as the other party may reasonably request and procure for its own policy. Such insurance shall name the other party and its beneficiaries and the respective agents and employees of each of them as additional insureds.

Each party shall, from time to time upon the request of the other party, furnish to the other party policies or certificates evidencing such coverage, which policies or certificates shall state that such insurance coverage may not be reduced, cancelled or allowed to expire without at least thirty (30) days' prior written notice to each party hereto.

## Section 17. Declaration of Protective Covenants.

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The parties hereto acknowledge that this Agreement is in furtherance of the rights granted and obligations set forth in the Declaration of Protective Covenants dated March 17, 1980 and recorded with the Recorder of Deeds of Cook County on March 28, 1984 as Document No. 25406331 ("Declaration"). In the event of a conflict between the terms of the Declaration and this Agreement as it relates to the Office Trustee and QSI, the terms of this Agreement shall prevail.

## Section 18. Notices.

All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed, or by the U.S. postal service if sent postage prepaid by U.S. registered or certified mail, return receipt requested, or by commercial overnight delivery service, such as Federal Express, with delivery charges paid by the notifying party. Notices shall be effective upon delivery or refusal to accept delivery and shall be addressed as follows:

If to the Office Trustee:

c/o Netcorp  
1433 N. Meacham Road  
Schaumburg, IL 60173

with a copy to:

Terrence F. Netzky  
Gould & Ratner  
Suite 800  
222 North LaSalle Street  
Chicago, Illinois 60601

If to QSI:

c/o CIGNA Investments, Inc.  
900 Cottage Grove Road  
Hartford, CT 06152-2311  
Attn: Real Estate Asset  
Management S-311

with a copy to:

CIGNA Companies  
Investment Law Department  
900 Cottage Grove Road  
Hartford, CT 06152-2215  
ATTN: Real Estate S-215A

Either party may change the name of the person or address to which notices and other communications are to be given by so notifying the other party. Notices or demands from the Office Trustee may be given by the Trustee, its beneficiaries or its agents.

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## Section 19. Exculpation.

It is expressly agreed by the parties hereto, notwithstanding anything herein to the contrary, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Office Trustee or any other land trustee holding title to a parcel (collectively a "Land Trustee") while in form purporting to be the representations, covenants, undertakings and agreements of the Land Trustee are nevertheless each and every one of them made and intended, not as personal representations, covenants, undertakings and agreements by the Land Trustee or for the purpose or with the intention of binding the Land Trustee personally, but are made and intended for the purpose only of subjecting the title holding interest and the trust estate under the land trust holding title to a Parcel to the terms of this Agreement and for no other purposes whatsoever, and in case of default hereunder by the Land Trustee (or default through, under or by any of its beneficiaries, or agents or representatives of said beneficiaries), the other party shall look solely to the title holding interest and the trust estate under the land trust holding title to the applicable Parcel, and this Agreement is executed and delivered by the Land Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; that the Land Trustee shall have no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained and no liability or duty shall rest upon the Land Trustee to sequester the trust estate or the rents, issues and profits arising therefrom, or the proceeds arising from any sale or other disposition thereof; and that no personal liability or personal responsibility of any sort is assumed by, or shall at any time be asserted or enforceable against, the Land Trustee, individually or personally, but only as Trustee under the provisions of the applicable land trust agreement, or against any of the beneficiaries under the land trust agreement, or account of this instrument or on account of any representation, covenant, undertaking or agreement of the Land Trustee in this Agreement contained, either express or implied, all such personal liability, if any, being expressly waived and released by the other party and by all persons claiming by, through or under the other party.





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## EXHIBIT A

LOTS 2 AND 3 IN THE RESUBDIVISION OF LOTS 1 AND 2 IN WALDEN INTERNATIONAL BEING A SUBDIVISION OF PART OF FRACTIONAL SECTION 1 AND PART OF THE NORTH 1/2 OF SECTION 12, BOTH IN TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF RESUBDIVISION RECORDED OCTOBER 6, 1982 AS DOCUMENT NUMBER 26374113, IN COOK COUNTY, ILLINIOS.

Address: Embassy Plaza  
1933 Meacham Road  
Schaumburg, Illinois

Pin Number: 07-01-101-008

Pin Number: 07-01-101-009

Pin Number: 07-12-101-023

Pin Number: 07-12-101-024

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