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. DEPT-01 RECORDING \$41.00  
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. #2582 + JM #-95-273613  
. COOK COUNTY RECORDER

## FIFTH MODIFICATION AGREEMENT

THIS FIFTH MODIFICATION AGREEMENT dated as of February 1, 1995, by and between DENNIS J. HIFFMAN, JOHN E. SHAFFER and E. THOMAS COLLINS, JR. (collectively, the "Original Borrowers"), RICHARD E. HULINA ("Hulina"), THE THROOP GROUP LIMITED PARTNERSHIP, an Illinois limited partnership (the "Mortgagor") and LASALLE NATIONAL BANK, a national banking association (the "Bank");

### W I T N E S S E T H:

WHEREAS, the Original Borrowers, Daniel G. Anderson ("Anderson"), the Mortgagor and the Bank heretofore entered into the following documents (collectively, the "Documents"):

- (i) Line of Credit Letter dated as of October 1, 1991 (the "Letter Agreement"), from the Bank to the Original Borrowers and Anderson;
- (ii) Secured Note dated as of October 1, 1991 (the "Note"), from the Original Borrowers and Anderson to the Bank in the original principal amount of \$500,000 (increased to \$750,000 on October 31, 1993);
- (iii) Mortgage and Security Agreement dated as of October 1, 1991 (the "Mortgage"), from the Mortgagor to the Bank, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on January 30, 1992, as Document No. 92060021;

Permanent Tax Index Number:

14-32-311-007

Address of Premises:

North of North Avenue  
and East of Throop Street  
Chicago, Illinois

This Instrument Prepared by and  
to be Returned After Recording  
to:

Elizabeth P. Strand, Esq.  
Seyfarth, Shaw, Fairweather  
& Geraldson  
Suite 4200  
55 East Monroe Street  
Chicago, Illinois 60603

BOX 333-CTI

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(iv) Assignment of Rents and Leases dated as of October 1, 1991 (the "Assignment of Rents"), from the Mortgagor to the Bank, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on January 30, 1992, as Document No. 92060022;

(v) Indemnity Agreement dated as of October 1, 1991, from the Mortgagor, the Original Borrowers and Anderson to the Bank; and

(vi) Security Agreement (Partnership Interests) dated as of October 1, 1991 (the "Covington Partnership Interest Assignment"), from the Original Borrowers and Anderson to the Bank; and

WHEREAS, the Documents were previously modified and amended by the Modification Agreement dated as of October 1, 1992 (the "First Modification") by and among the Original Borrowers, Anderson, the Mortgagor and the Bank, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on November 19, 1992, as Document No. 92068166, by the Second Modification Agreement dated as of October 31, 1993 (the "Second Modification"), by and among the Original Borrowers, Hulina, the Mortgagor and the Bank, recorded in the Office of said Recorder of Deeds on December 7, 1993, as Document No. 93999539, the Third Modification Agreement dated as of November 15, 1994 (the "Third Modification"), by and among the Original Borrowers, Hulina, the Mortgagor and the Bank, recorded in the Office of said Recorder of Deeds on January 4, 1995, as Document No. 95005425, and the Fourth Modification Agreement dated as of January 1, 1995 (the "Fourth Modification"), by and among the Original Borrowers, Hulina, the Mortgagor and the Bank, recorded in the Office of said Recorder of Deeds on January \_\_\_\_\_, 1995, as Document No. \_\_\_\_\_; and the First Modification, the Second Modification, the Third Modification and the Fourth Modification being sometimes referred to herein collectively as the "Previous Modifications"; and

WHEREAS, the Documents, as modified and amended by the Previous Modifications, encumber the real estate described in Exhibit A attached hereto and the personal property located thereon; and

WHEREAS, the parties desire to make certain modifications and amendments to the Documents, as previously modified and amended by the Previous Modifications, as more fully provided for herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and other good

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and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Recitals Part of Agreement; References to Documents. The foregoing recitals are hereby incorporated into and made a part of this Agreement. Except as otherwise stated herein, all references in this Agreement to any one or more of the Documents shall be deemed to include the previous modifications and amendments to the Documents provided for in the Previous Modifications, whether or not express reference is made to such previous modifications and amendments.

Section 2. Increase in Line. The amount of the line of credit evidenced and secured by the Documents (the "Line") is hereby increased by the amount of \$250,000, from \$750,000 to \$1,000,000, and all of the Documents are hereby modified and amended accordingly. Without limitation on the generality of the foregoing, the amount "\$750,000" is hereby changed to "\$1,000,000" each time it appears in the Documents, and the amount "Seven Hundred Fifty Thousand" is hereby changed to "One Million" each time it appears in the Documents. The amount of the increase in the Line shall be made available for direct borrowings and for the issuance of letters of credit as described in Section 1(b) of the Letter Agreement, as modified and amended by the Previous Modifications and as modified and amended by this Agreement.

Section 3. Documents to Secure Lincoln Partners Loan; Cross Default with Lincoln Partners Loan. The loan that is evidenced and secured by the "Lincoln Partners Loan Documents" (as defined in paragraph (a) of this Section 3) shall be secured on a parity and equality of rank with the Line. The Documents are hereby modified and amended to the extent necessary to provide for such security. Any and all references in the Documents to the obligations secured thereby shall include a reference to the "Lincoln Partners Loan," the "Lincoln Partners Note" and the "Lincoln Partners Loan Documents" (each as defined in paragraph (a) of this Section 3), and a reference to all principal, interest and other amounts payable under the Lincoln Partners Note and the other Lincoln Partners Loan Documents, and all other obligations under and/or evidenced by the Lincoln Partners Note and the other Lincoln Partners Loan Documents. Any and all amounts recovered through the exercise of remedies under any of the Documents, which under the terms of any such Document are to be applied to the principal, interest or other amounts due under the Note and the other Documents, shall be applied first to principal, interest and other amounts due under the Note and the other Documents, and next principal, interest and other amounts due under the Lincoln Partners Note and the other Lincoln Partners Loan Documents. An event of default under any of the

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Lincoln Partners Loan Documents shall constitute an event of default under the Documents. The Documents are hereby modified and amended to incorporate the foregoing provisions of this Section 3. Without limitation on the generality of the foregoing provisions of this Section 3 --

(a) The following definitions shall be added to Section 1.1 of the Mortgage:

"Lincoln Partners Documents" means the Lincoln Partners Note, the Lincoln Partners Mortgage, and all other documents and instruments at any time evidencing and securing the Lincoln Partners Loan, as same may have heretofore been or may hereafter be modified, amended, renewed or extended.

"Lincoln Partners Loan" means the mortgage loan in the original amount of \$575,000 (\$471,000 currently outstanding) made by the Mortgagee to the Lincoln Trustee to provide mortgage financing for the property commonly known as Lincoln Marketplace, Highway 10, Lincoln, Illinois.

"Lincoln Partners Mortgage" means the Mortgage and Security Agreement dated as of November 1, 1991, from the Lincoln Trustee to the Mortgagee, as same may have heretofore been or may hereafter be modified, amended, renewed or extended.

"Lincoln Partners Note" means the Mortgage Note of the Lincoln Trustee dated November 1, 1991, in the original principal amount of \$575,000 (\$471,000 currently outstanding), made payable to the order of the Mortgagee, as same may have heretofore been or may hereafter be modified, amended, renewed or extended.

"Lincoln Trustee" means American National Bank and Trust Company of Chicago, a national banking association, as Trustee under a Trust Agreement dated March 25, 1991, and known as Trust No. 113629-02.

In addition, for purposes of this Agreement, the terms defined above shall have the respective meanings specified above.

(b) Page 3 of the Mortgage is hereby modified and amended as follows:

(i) By inserting the words "and the Lincoln Partners Note" immediately following the words "the Note" in the first line of paragraph (a) on such page;





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(ii) By inserting the words "and of the Lincoln Trustee under the Lincoln Partners Note" immediately following the words "the Note" in the fourth line of paragraph (a) on such page;

and

(iii) By revising paragraph (b) on such page in its entirety to read as follows:

(b) Performance and observance by the Mortgagor and the Lincoln Trustee of all of the terms, covenants and provisions of this Mortgage and the Lincoln Partners Mortgage, respectively;

(c) Page 4 of the Mortgage is hereby modified and amended as follows:

(i) By inserting the words "and Lincoln Partners Loan Documents" immediately following the words "the other Loan Documents" each time they appear in paragraphs (c) and (d) on such page;

and

(ii) By inserting into the paragraph that begins with the words "PROVIDED, HOWEVER," immediately following the word "contained," in the fifth line thereof, the words "and if the Lincoln Trustee shall pay the principal and all interest as provided in the Lincoln Partners Note,".

(d) Section 2.1 of the Mortgage is hereby modified and amended by adding the following paragraph at the end of such Section:

The Lincoln Partners Note secured hereby, which is hereby incorporated into this Mortgage by reference with the same effect as if set forth in full herein, is in the original principal amount of \$575,000 (\$471,000 currently outstanding), and bears interest at a variable rate of 1% per annum in addition to the Mortgagee's Prime Rate (as defined above) from time to time in effect while the Lincoln Partners Note is outstanding. Interest is payable on the Lincoln Partners Note in arrears on the first day of each month commencing January 1, 1992. Commencing on January 1, 1993, monthly principal payments are due and payable on the Lincoln Partners Note in the amount of \$4,000. All of the unpaid principal of and accrued and unpaid interest on the Lincoln Partners Note are due and payable in full on December 30, 1995.

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(e) Section 4.1 of the Mortgage is hereby modified and amended as follows:

(i) By inserting the words "or the Lincoln Partners Note" immediately following the words "the Note" in the second line of paragraph (a) of such Section;

(ii) By inserting the words "or by the Lincoln Trustee under the Lincoln Partners Loan Documents," immediately following the words "Loan Documents," in the fifth line of paragraph (a) of such Section; and

(iii) By inserting the words "or the Lincoln Partners Loan Documents" immediately following the words "other Loan Documents" in the fourth line of paragraph (g) of such Section.

(f) The first "WHEREAS" clause on page 1 of the Assignment of Rents is hereby modified and amended by inserting the following language immediately following the word "Mortgage" in the fifth line of such clause: ", and of the Lincoln Partners Note (as defined in the Mortgage) also secured by the Mortgage;"

(g) The Note is hereby modified and amended by inserting words "or any of the Lincoln Partners Loan Documents" immediately following the words "the Loan Documents" in the eighth line of the fourth full grammatical paragraph on page 2 of the Note; and

(h) Section 5 of the Assignment of Rents is hereby modified and amended by inserting the words "or the Lincoln Partners Note (as defined in the Mortgage)" immediately following the words "the said Mortgage Note" in the sixth line of such Section.

Section 4. Attachment to Note. The Bank may, and prior to any transfer by it of the Note shall, attach a copy of this Agreement to the original Note and place an endorsement on the original Note making reference to the fact that such attachment has been made.

Section 5. Documents to Remain in Effect; Confirmation of Obligations; References. The Documents shall remain in full force and effect as originally executed and delivered by the parties, except as previously modified and amended by the Previous Modifications and as expressly modified and amended herein. The Original Borrowers, Hulina and the Mortgagor hereby (i) confirm and reaffirm all of their obligations under the

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Documents, as previously modified and amended by the Previous Modifications and as modified and amended herein; (ii) acknowledge and agree that the Bank, by entering into this Agreement, does not waive any existing or future default or event of default under any of the Documents, or any rights or remedies under any of the Documents, except as expressly provided herein; (iii) acknowledge and agree that the Bank has not heretofore waived any default or event of default under any of the Documents, or any rights or remedies under any of the Documents; and (iv) acknowledge that they do not have any defense, set-off or counterclaim to the payment or performance of any of their obligations under the Documents, as previously modified and amended by the Previous Modifications and as modified and amended herein. In addition, the Original Borrowers and Hulina hereby acknowledge and agree that their respective obligations under the Documents shall continue in full force and effect notwithstanding the fact that, pursuant to the provisions of the Second Modification, Anderson was previously released from liability under the Letter Agreement and the Note. All references in the Documents to any one or more of the Documents, or to the "Loan Documents," shall be deemed to refer to such Document, Documents or Loan Documents, as the case may be, as previously modified and amended by the Previous Modifications and as modified and amended by this Agreement.

Section 6. Certifications, Representations and Warranties. In order to induce the Bank to enter into this Agreement, the Original Borrowers, Hulina and the Mortgagor hereby certify, represent and warrant to the Bank that all certifications, representations and warranties contained in the Documents and in all certificates heretofore delivered to the Bank are true and correct as of the date hereof, and all such certifications, representations and warranties are hereby renewed and made to speak as of the date of this Agreement.

Section 7. Entire Agreement. This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth.

Section 8. Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

Section 9. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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Section 10. Amendments, Changes and Modifications. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

Section 11. Construction.

(a) The words "hereof," "herein," and "hereunder," and other words of a similar import refer to this Agreement as a whole and not to the individual Sections in which such terms are used.

(b) References to Sections and other subdivisions of this Agreement are to the designated Sections and other subdivisions of this Agreement as originally executed.

(c) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

(d) Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

Section 12. Execution of Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13. Governing Law. This Agreement is prepared and entered into with the intention that the law of the State of Illinois shall govern its construction and enforcement.

IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

  
\_\_\_\_\_  
Dennis J. Hiffman

  
\_\_\_\_\_  
John E. Shaffer

  
\_\_\_\_\_  
E. Thomas Collins, Jr.

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*Richard E. Hulina*

Richard E. Hulina

THE THROUGH GROUP LIMITED PARTNERSHIP

By *[Signature]*  
Dennis W. Hiffman, General Partner

By *[Signature]*  
John E. Shaffer, General Partner

By *[Signature]*  
E. Thomas Collins, Jr., General Partner

LASALLE NATIONAL BANK

By *[Signature]*  
Title: Vice President

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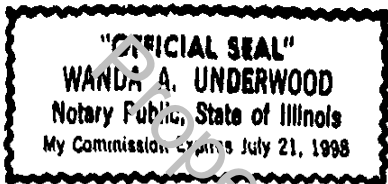
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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

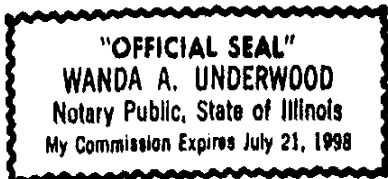
The foregoing instrument was acknowledged before me this 27th day of February, 1995, by Dennis J. Hiffman, John E. Shaffer and E. Thomas Collins, Jr., individually and as all of the general partners on behalf of The Throop Group Limited Partnership, an Illinois limited partnership.



Wanda A. Underwood  
Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

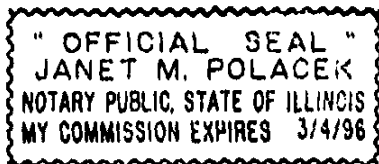
The foregoing instrument was acknowledged before me this 27th day of February, 1995, by Richard E. Hulina.



Wanda A. Underwood  
Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 31st day of <sup>March</sup> ~~February~~, 1995, by Lisa J. Cunningham, Vice President of LaSalle National Bank, a national banking association, on behalf of the association.



Janet M. Polacek  
Notary Public

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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

THAT PART OF BLOCK 1 IN ILLINOIS STEEL COMPANY'S NORTH WORKS ADDITION TO CHICAGO IN THE SOUTH 1/2 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WESTERLY LINE OF BLOCK 1 AFORESAID, BEING ALSO THE EASTERLY LINE OF NORTH THROOP STREET, SAID POINT BEING 290.10 FEET NORTH OF THE MOST SOUTHWESTERLY CORNER OF BLOCK 1 AFORESAID; THENCE NORTH 62 DEGREES, 38 MINUTES, 53 SECONDS EAST, 267.30 FEET; THENCE SOUTH 27 DEGREES, 30 MINUTES, 24 SECONDS EAST, 96.19 FEET; TO THE HEREINAFTER DESIGNATED POINT OF BEGINNING OF THE FOLLOWING DESCRIBED TRACT; THENCE NORTH 27 DEGREES, 30 MINUTES, 24 SECONDS WEST, 96.19 FEET; THENCE NORTH 62 DEGREES, 38 MINUTES, 53 SECONDS EAST, 170.29 FEET; THENCE NORTH 27 DEGREES, 24 MINUTES, 28 SECONDS WEST, 9.65 FEET; THENCE NORTH 62 DEGREES, 35 MINUTES, 30 SECONDS EAST, 13.68 FEET; THENCE NORTH 27 DEGREES, 25 MINUTES, 36 SECONDS WEST, 110.00 FEET; THENCE NORTH 18 DEGREES, 19 MINUTES, 37 SECONDS EAST, 324.53 FEET TO A POINT ON THE WESTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTHERLY AND EASTERLY ALONG SAID DOCK LINE, TO A POINT OF INTERSECTION WITH A LINE PASSING THROUGH THE HEREINABOVE DESIGNATED POINT OF BEGINNING AND BEARING NORTH 62 DEGREES, 37 MINUTES, 31 SECONDS EAST; THENCE SOUTH 62 DEGREES, 37 MINUTES, 31 SECONDS WEST ALONG THE LAST DESCRIBED LINE, 372.60 FEET TO THE HEREINABOVE DESIGNATED POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS RESERVED IN DEED FROM AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 10, 1988 AND KNOWN AS TRUST NUMBER 106192-03 TO THE CITY OF CHICAGO DATED JANUARY 25, 1991 AND RECORDED JANUARY 31, 1991 AS DOCUMENT 91047847 FOR INGRESS AND EGRESS OVER, UPON AND ACROSS THOSE PORTIONS OF EXHIBIT A ATTACHED THERETO, REASONABLY REQUIRED BY THE GRANTOR TO PROVIDE ACCESS WITH A MINIMUM WIDTH OF 25 FEET FOR MOTOR VEHICLE AND PEDESTRIAN TRAFFIC TO AND FROM PARCEL 1 AND THE PUBLIC ROADWAY COMMONLY KNOWN AS NORTH THROOP STREET IN COOK COUNTY, ILLINOIS.

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