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*Second Modification Agreement*

*12/10/96*

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## SECOND MODIFICATION AGREEMENT

STATE OF ILLINOIS     §  
                                  §     KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF COOK       §

This Second Modification Agreement (the "Second Modification") is made and entered into by and among **LASALLE NATIONAL TRUST (F/K/A LA SALLE NATIONAL BANK)**, 135 So. La Salle Street, Chicago, Illinois 60603, as Trustee under Trust Agreement dated November 13, 1985, and known as Trust No. 106506 <sup>and not personally</sup> (the "Obligor"); **AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY**, P.O. Box 1375, Houston, Texas 77001 (the "Lender"); **EVANSTON GALLERIA LIMITED PARTNERSHIP**, an Illinois limited partnership ("Evanston Galleria" and/or "Beneficiary"), whose general partners are First Dearborn Evanston Associates Limited Partnership and First Dearborn Income Properties L.P. II; **FIRST DEARBORN PROPERTIES, INC.** ("First Dearborn"); **ROBERT S. ROSS** ("Ross"); and **BRUCE H. BLOCK** ("Block") (First Dearborn, Ross and Block being hereinafter referred to as the "Controlling Parties"), effective as of May 1, 1996.

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

#### 1. References, Recitals and Consideration

The Obligor, Evanston Galleria, the Controlling Parties and the Lender hereby stipulate and agree that the following events have occurred and that the following facts and conditions exist:

1.1 On April 5, 1989, Obligor executed a promissory note (the "Original Note"), in the original principal sum of Eight Million Two Hundred Fifty Thousand and No/100 Dollars (\$8,250,000.00), payable to the order of the Lender to evidence a loan made by Lender to Obligor (the "Loan").

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1.2 The Obligor's obligation to repay the Original Note is secured by, inter alia (i) that certain Mortgage and Security Agreement (the "Original Mortgage"), of even date with the Original Note, between Obligor, as mortgagor, and Lender, as mortgagee, recorded April 10, 1989, in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 89154856, and covering and encumbering that certain real property (therein and herein referred to as the "Mortgaged Property"), described on Exhibit A, attached hereto and hereto and incorporated herein for all purposes; (ii) Assignment of Lessor's Interest in Leases ("Evanston Assignment") dated April 5, 1989, executed by Evanston Galleria, as assignor, and Lender, as assignee, recorded April 10, 1989, in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 89154857; (iii) Assignment of Lessor's Interest in leases ("Trustee Assignment") dated April 5, 1989, executed by Obligor, as assignor, and Lender, as assignee, recorded April 10, 1989, in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 89154858; (iv) Collateral Assignment of Beneficial Interest Under Land Trust ("Collateral Assignment") dated April 5, 1989, executed by Evanston Galleria and acknowledged and accepted by Lender and Obligor; and (v) UCC Financing Statements ("Financing Statements") dated April 5, 1989, filed April 11, 1989, in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 89 U 08727 and filed April 14, 1989, with the Secretary of State of the State of Illinois as Document No. 2561324.

1.3 The Original Note is also secured by (i) that certain Beneficiary's Guaranty, dated April 5, 1989 (the "Evanston Guaranty"), for the benefit of the Lender executed by Evanston

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Galleria, and (ii) that certain Debt Service Guaranty dated April 5, 1989 ("Slaven/Ashkin Guaranty") for the benefit of the Lender executed by Arthur Slaven and Laurence Ashkin (Slaven, Ashkin and Evanston Galleria are hereinafter referred to as the "Guarantors"). Both the Evanston Guaranty and the Slaven/Ashkin Guaranty were modified by instruments executed in connection with the First Modification (as hereinafter defined).

1.4 On February 23, 1993 (but effective as of August 1, 1992) Obligor, Beneficiary, the Guarantors and the Lender entered into that certain First Modification Agreement ("the First Modification") which amongst other matters, extended the Maturity Date of the Note until May 1, 1996 and modified the interest rate payable upon the indebtedness.

1.5 The Note is now due and payable in full and Obligor and Beneficiary acknowledge that there does not exist any defense, setoff or credit against the Loan and that Lender is now entitled to enforce all of its rights and remedies under the Loan Documents, including, but not limited to, the commencement of an action to foreclose upon its Mortgage.

1.6 Obligor, Beneficiary and the Controlling Parties have requested that Lender agree to modify and extend the Loan and Lender is amenable to such request, subject to the terms hereof.

1.7 The Obligor and the Lender have agreed to make certain modifications to the provisions of the Original Note and the Original Mortgage, as previously modified by the First Modification, as set forth more particularly herein (the Original Note and the Original Mortgage, as modified by the First Modification and as further modified herein, sometimes hereinafter being referred to

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respectively as the "Note" and the "Mortgage"). The Mortgage, the Evanston Assignment, the Trustee Assignment, the Collateral Assignment, the Financing Statements, the Evanston Guaranty and the Slaven/Ashkin Guaranty and all other assignments, and lien instruments heretofore or concurrently herewith executed by the Obligor, in favor of Lender, and pertaining to and securing the Note, sometimes are referred to herein as the "Loan Documents" and/or "Senior Liens."

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged and confessed, the Obligor, Evanston Galleria, the Controlling Parties and the Lender hereby agree as follows:

## 2. Definitions

As used herein, the following terms shall have the respective meanings set forth in this Article 2:

Section 2.1 The term "Applicable Law" shall mean and include all provisions of federal, state, and local constitutions, statutes, rules, regulations, judicial decisions, ordinances, or other legal requirements that are applicable to the Note or to the Obligor's obligation to repay the Note.

Section 2.2 The term "Controlling Party Guaranty" shall mean that certain guaranty executed by First Dearborn, Ross and Block of even date herewith.

Section 2.3 The term "Effective Date" shall mean May 1, 1996.

Section 2.4 The term "Guaranties" shall mean collectively the Evanston Guaranty and the Slaven/Ashkin Guaranty.

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Section 2.5 The term "Highest Lawful Rate" shall mean eighteen percent (18%) per annum.

Section 2.6 The term "Junior Lienor" shall mean David L. Husman, and each subsequent holder, from time to time, of the Junior Liens and the indebtedness secured thereby.

Section 2.7 The term "Junior Liens" shall mean that certain Mortgage dated April 10, 1989 and an Assignment of Rents dated April 10, 1989, each executed by LaSalle National Bank, as Trustee, under Trust Agreement dated November 13, 1985, and known as Trust No. 106506 to Arthur Slaven and Laurence Ashkin, and filed in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 90440255 and as Document 90440256, respectively. The Mortgage and Assignment of Rents were assigned to Manufacturers' Affiliated Trust Company, as Custodian for David L. Husman ("Manufacturers"), under Trust No. 86206, recorded September 27, 1990 as Document No. 90470173. Subsequent thereto, Manufacturers assigned the Mortgage and the Assignment of Rents to Equibase Capital Corporation, an Illinois corporation by instrument filed in the Office of the Recorder of Deeds of Cook County, Illinois as Document No. 93153911. The Mortgage was amended by First Modification Agreement recorded March 2, 1993 as Document No. 93153912.

Section 2.8 The term "Maturity Date" shall mean May 1, 1998, except as said Maturity Date may be accelerated by Lender pursuant to the Note, the Mortgage, the Loan Documents or this Second Modification because of an Event of Default by Obligor or Evanston Galleria thereunder.

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Section 2.9 The term "Interest Differential" shall mean the aggregate of all interest which has accrued at the Contract Rate on the outstanding principal balance of the Note, less any Minimum Pay Rate of Interest actually received by Lender upon the Note, plus interest thereon compounded monthly at the Contract Rate until paid.

Section 2.10 The term "Contract Rate of Interest" shall mean nine percent (9%) per annum.

Section 2.11 The term "Minimum Pay Rate of Interest" shall mean 8.25% per annum.

### 3. Reaffirmation of Indebtedness and Revised Payment Schedule

Section 3.1 The Obligor acknowledges and confirms that as of the Effective Date the principal balance on the Note that remains unpaid is Eight Million, Three Hundred Eleven Thousand Seven Hundred Forty and 29/100 Dollars (\$8,311,720.29) and that interest at the Contract Rate has been paid to Lender through the Effective Date.

Section 3.2 The Obligor and the Lender hereby renew the Note and the indebtedness represented thereby and do hereby extend the Maturity Date of the Note to May 1, 1998, as said Maturity Date may be accelerated by Lender pursuant to the Note, the Mortgage, the Loan Documents or this Second Modification because of an Event of Default by Obligor or Evanston Galleria thereunder.

Section 3.3 The Obligor, Evanston Galleria and the Controlling Parties acknowledge and agree that Lender is under no obligation to extend the Maturity Date of the Note, that Lender reluctantly agreed to execute this Second Modification solely as a final accommodation to Obligor and Evanston Galleria, and that

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Lender has advised Obligor, Evanston Galleria and the Controlling Parties that under no circumstances or event shall the Maturity Date of the Note be extended again beyond May 1, 1998.

Section 3.4 In lieu of making the installment payments called for by the provisions of the Original Note, as modified by the First Modification, payments of principal and interest shall be due and payable as follows:

(a) Commencing on the Effective Date, interest only on the unpaid principal balance of the Note, computed at the Minimum Pay Rate of Interest on the outstanding principal balance, (currently in the monthly amount of Fifty Seven Thousand One Hundred Forty-Three and 21/100 Dollars (\$57,143.21)), so long as no Event of Default shall then exist, shall be due and payable in consecutive monthly installments; the first such installment shall be due and payable as of June 1, 1996, and on the first day of each of the next twenty-two (22) months, until the Maturity Date. Notwithstanding the modified payments provided herein, interest (to the extent not paid) shall continue to accrue and compound monthly on the unpaid principal balance of the Note at the Contract Rate.

(b) On the Maturity Date, as same may be accelerated by Lender, the entire unpaid principal balance of the Note, all accrued but unpaid interest, including all accrued and unpaid Interest Differential (to the extent said Interest Differential is payable pursuant to subparagraph (c) hereof), all Late Charges and Default Interest and all advances or payments made or charges incurred by Lender on account of Obligor, Beneficiary or the Mortgaged Property, or other sums due to Lender by Obligor pursuant to the Note, Mortgage or the Loan Documents shall become due and payable in full.

(c) The Interest Differential shall be due and payable only upon and from the proceeds of any: (1) sale of the Mortgaged Property, or any portion thereof, (including a foreclosure sale or any sale made pursuant to any order of a court in connection with any proceedings seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for debtors) voluntarily or involuntarily instituted against Obligor, Evanston Galleria or the Mortgaged Property, or (2) from any refinancing of the Mortgaged Property, or (3) from any funds then remaining in the Cash Flow Escrow (as hereinafter defined), but not otherwise. In determining the amount of said proceeds, no deduction shall be made for any distribution, return, fee or charge of any kind, nature or description payable to Obligor, Beneficiary, any partner in Beneficiary, or any partner or shareholder in any such partner, or any affiliate of any of the aforesaid nor shall any payment due to the Junior Lienor

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or the holder of any lien inferior to the Senior Lien be deducted. Such proceeds, including any balance of the Cash Escrow Account, shall be credited first to all Late Charges and Default Interest and all advances or payments made or charges incurred by Lender on account of Obligor, Beneficiary or the Mortgaged Property, next on the Minimum Pay Rate of Interest due and unpaid, next on the outstanding principal and the remainder, if any, on the Interest Differential. Provided, however, that for determining the extent of the Beneficiary's equity in the Mortgaged Property at such time as the trustee's deed under Section 5.5 hereof is recorded, the Interest Differential shall be included as a portion of the Loan then owed to Lender.

(d) Upon the execution of this Second Modification, Obligor and Evanston Galleria shall deposit in a Cash Escrow Account to be held by Cohen Financial Corporation, as Escrow Holder pursuant to the Escrow Agreement of even date herewith executed by Beneficiary, Lender and Escrow Holder in escrow for the uses herein specified, all Excess Cash Flow (as hereinafter defined) derived or received from the Mortgaged Property since the Effective Date, and Lender shall deposit in said Cash Escrow Account any interest received by Lender from Obligor for any period accruing after the Effective Date in excess of the Minimum Pay Rate of Interest (after first applying such excess interest to cure any existing default in monthly payments due upon the Note). On the 15th day of each month thereafter Obligor and Evanston Galleria shall deposit in said Cash Escrow Account all Excess Cash Flow derived or received from the Mortgaged Property for the preceding calendar month. Each such deposit shall be accompanied by cash flow statements, in form and substance reasonably satisfactory to Lender and certified by the chief financial officer of Evanston Galleria or Ross or Block identifying all receipts and expenditures in such scope and detail as Lender may require. For the purposes of this Second Modification, "Excess Cash Flow" shall mean all rents, revenues, income and receipts of any kind, nature or description generated by the Mortgaged Property ("Gross Receipts") in excess of Operating Expenses for said same period of time for the Mortgaged Property. For the purposes of this Second Modification, "Operating Expenses" shall mean all ordinary, necessary and customary expenses incurred to maintain and operate the Mortgaged Property, as reasonably determined by Lender, plus any debt service payments and escrow deposits for real estate taxes and insurance premiums actually received by Lender from Obligor or Beneficiary (or for which receipts are furnished by Beneficiary evidencing direct payment of said real estate taxes and/or insurance premiums), but in no event shall Operating Expenses include any capital expenditure unless first approved in writing by Lender (such consent not to be unreasonably withheld by Lender), nor any disbursements, fees, charges, distributions or payments of any kind to Obligor (other than an annual administrative fee for Obligor's services as Trustee not to exceed Six Hundred Dollars (\$600.00) per year), Evanston Galleria, any partner of Evanston

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Galleria, or any partner or shareholder in any such partner or any affiliate of any of the aforesaid (excepting only a property management fee not to exceed three percent (3%) to FDC/Management, Inc.) nor shall any debt service payment be made by Obligor or Beneficiary upon the Junior Lien or included as an Operating Expense. Lender shall be and is hereby granted a security interest in and to such Cash Escrow Account and any and all funds therein, with all of the rights and remedies of a secured party under the Uniform Commercial Code of Illinois. In the event of a default under the Note, the Mortgage, the Loan Documents or this Second Modification, Lender may, at its option, elect to require the Escrow Holder to pay over to Lender all funds then held in the Cash Escrow Account and Lender may use said Cash Escrow Funds to cure said default and/or to apply to any sum due under the Note. Upon the Maturity Date, any funds then held in the Cash Escrow Account may be applied in payment of any sum due under the Note, including, but not limited to, payment of Interest Differential and/or all advances or payments made or charges incurred by Lender on account of Obligor, Beneficiary or the Property or other sums due to Lender by Obligor under the Note, the Mortgage or the Loan Documents; provided, however, that such sums shall be credited first to all Late Charges and Default Interest and all advances or payments made or charges incurred by Lender on account of Obligor, Beneficiary or the Mortgaged Property, next on the Minimum Pay Rate of Interest due and unpaid, next on the outstanding principal and the remainder, if any, on the Interest Differential. In the event that, in the sole determination of Lender, Obligor and/or Evanston Galleria defaults in making any required deposit of Excess Cash Flow when due with the Escrow Holder and/or Obligor or Evanston Galleria defaults in the delivery of any cash flow statements required hereunder and such default is not cured by Beneficiary within ten (10) days after written notice by Lender to Beneficiary of such default, Lender reserves the right to convert the Cash Escrow Account to a Cash Collateral/Lockbox Agreement whereby all tenants are directed and required to make payment of their rental obligations owed to Obligor and/or Evanston Galleria directly to Lender or its agent. A failure by Obligor and/or Evanston Galleria to fully and promptly perform its obligations hereunder shall be deemed to be an Event of Default under the Loan Documents. The Escrow Holder shall furnish to Beneficiary quarterly accounts of the Excess Cash Flow Account, and if applicable, monthly accounts of any Cash Collateral Account.

In the event that there exists from time to time a positive balance in said Cash Escrow Account, Beneficiary may make a written request to Lender for a disbursement to it of such amount as may be reasonably necessary from time to time to augment monthly cash flow from the Mortgaged Property to pay all Operating Expenses when due for the Mortgaged Property. Such request shall be in writing, shall be in form and substance and in scope and detail reasonably satisfactory to Lender, made not more often than once a month, and not while Obligor or Beneficiary is in default beyond any applicable

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grace period under the Loan Documents or this Second Modification. Lender shall authorize the Escrow Holder to make such disbursements to Beneficiary from the Cash Escrow Account, to the extent that pursuant hereto the Beneficiary is entitled to such disbursement after Lender has received such written request and such supporting statements as are herein required, but only if Lender approves in its reasonable discretion such request for disbursement.

Section 3.5 The Loan may be prepaid, in whole or in part, at any time, upon thirty (30) days prior written notice of such prepayment, without premium or prepayment fee.

Section 3.6 Notwithstanding anything to the contrary herein, the agreement by Lender to accept the Minimum Pay Rate of Interest and to defer collection of the Interest Differential, shall terminate if there shall occur an Event of Default under the Note, the Mortgage, the Loan Documents or this Second Modification whereby Lender elects to accelerate the Maturity Date, and nothing contained herein shall waive, modify, release or affect the right of Lender to impose and collect the Default Rate of Interest and/or Late Charges, as specified in the Note, because of a subsequent Event of Default by Obligor.

Section 3.7 The Obligor acknowledges that, in accordance with the terms and provisions of the Mortgage, it will continue making monthly escrow deposits with the Lender for the payment of taxes and insurance premiums associated with the Mortgaged Property. The current amount, subject to change, is Twenty-Seven Thousand Eight Hundred Thirty-Nine and 53/100 Dollars (\$27,839.53) each month.

#### 4. Modification of Mortgage

Obligor, Beneficiary and Lender acknowledge and agree that the Mortgage shall be and is modified as hereinafter provided. This Second Modification shall constitute a modification of mortgage and shall be recorded in the Cook County Records of Deeds.

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Section 4.1 Article 3 of the Mortgage is amended by the addition thereto of the following provisions:

(a) 3.3 Financial Capability of Beneficiary. Beneficiary acknowledges and agrees that as of the date of the Modification of Mortgage, the income derived from the Mortgaged Property would not support payment to Mortgagee of a market rate of interest equal to the Contract Rate of Interest, on commercially reasonable terms. However, from and after the date hereof and as a result of this Modification of Mortgage, Beneficiary is solvent and is able to pay its debts as they become due in the normal course of business.

(b) Beneficiary affirms that it has no present plans or intentions to file any petition in bankruptcy or reorganization with respect to Beneficiary or with respect to the Mortgaged Property.

Section 4.2 Article 4 of the Mortgage is amended by the addition thereto of the following provisions and/or new sections:

(a) Section 4.10 is amended by adding thereto the following:

"In addition thereto, and not in lieu thereof, Beneficiary shall furnish to Mortgagee each month a monthly cash flow statement for the Mortgaged Property for the preceding month not later than the fifteenth (15th) day of each month, in form and substance and in such scope and detail as Mortgagee may require, certified by the chief financial officer of Beneficiary or Robert S. Ross or Bruce H. Block as being accurate, which cash flow statement shall be subject to audit by Mortgagee at the Mortgagor's expense."

(b) Section 4.11 Obligor and Beneficiary agree that Obligor and Beneficiary remain solely in control of the Mortgaged Property, that they determine the business plan for, and employment, management, leasing and operating directions and decisions for, the Mortgaged Property. Nothing in this Mortgage or in the Second Modification shall be intended or construed to hold Mortgagee liable or responsible for any expense, disbursement, liability or obligation of any kind or nature whatsoever, including, but not limited to, wages, salaries, payroll taxes, withholding, benefits or other amounts payable to or on behalf of Obligor or Beneficiary, whether any present or future creditor attempts to assert a claim against Mortgagee or the Mortgaged Property, including, but not limited to, any claim by any Junior Lienor under its Junior Lien.

(c) Section 4.12 Beneficiary acknowledges and agrees that it is a single asset borrower with no properties or assets other than its interest in the Mortgaged Property;

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Obligor and Beneficiary therefore covenant and agree that, in the event Obligor, Beneficiary or any general partner of Beneficiary shall (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the United States Code, as amended ("Bankruptcy Code"), (ii) be the subject of any order for relief issued under the Bankruptcy Code, (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for debtors which is not discharged within sixty (60) days of its filing, (iv) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator, or (v) be the subject of any order, judgment or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors which is not discharged within sixty (60) days of its filing, or (vi) there shall otherwise occur any of the events set forth in Section 6.4 of the Mortgage, then, subject to court approval, Mortgagee shall thereupon be entitled and Obligor and Beneficiary irrevocably consent to relief from any automatic stay imposed by Section 362 of the Bankruptcy Code, or otherwise, on or against the exercise of the rights and remedies otherwise available to Mortgagee as provided in the Note, the Mortgage or the Loan Documents, and as otherwise provided by law, and Obligor and Beneficiary hereby irrevocably waive their rights to object to such relief, and if such action is instituted by Obligor, Beneficiary or any general partner of Beneficiary or is otherwise consented to or acquiesced in by Obligor, Beneficiary or any general partner of Beneficiary, such action shall be deemed to be a "bad faith filing" intended solely to delay the enforcement by Mortgagee of its rights and remedies under the Note, the Mortgage or the Loan Documents.

Section 4.3 Section 7.2 of the Mortgage is deleted.

Section 4.4 ~~Obligor shall use its best efforts to~~ Obligor shall cause the Junior Lien to be released and discharged as a lien upon the fee simple title in the Mortgaged Property on or before May 1, 1997.

## 5. Additional Covenants and Warranties

In consideration of the execution of this Second Modification by Lender, Obligor, Evanston Galleria and the Controlling Parties do hereby covenant, warrant and agree that:

Section 5.1 This Second Modification shall be deemed to be a Loan Document and a default by Obligor or Evanston Galleria under

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this Second Modification shall be deemed to be an Event of Default simultaneously under the Note, the Mortgage and the other Loan Documents.

Section 5.2 To the fullest extent permitted by law, Obligor, as Mortgagor, and Evanston Galleria, as Beneficiary, hereby irrevocably and unconditionally waive and release any and all rights of redemption, or benefits thereunder, from sale under any order or decree of foreclosure of the Mortgage on behalf of Obligor, as Mortgagor, the Beneficiary, the trust estate and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of the Mortgage, as originally executed.

Section 5.3 As additional consideration for the execution of this Second Modification by Lender, Obligor, Evanston Galleria, the Guarantors and the Controlling Parties hereby release and forever discharge Lender, its agents, servants, employees, directors, officers, attorneys, affiliates, subsidiaries, successors and assigns and all persons, firms, corporations, and organizations acting in Lender's behalf (hereinafter all referred to as the "Releasees") of and from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which Obligor, Evanston Galleria, the Guarantors or the Controlling Parties, or any of them, may now have or claim to have against said Releasees or any of them, whether presently known or unknown, and of every nature and extent whatsoever on account of or in any way touching, concerning, arising out of or founded upon all events or conduct of Releasees that allegedly occurred or failed to occur on or prior to the date of execution of this Second Modification or

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any events or conduct of Releasees in any way pertaining to the Note, Mortgage or other Loan Documents, the First Modification or the execution and delivery of this Second Modification. This Agreement and covenant on the part of Obligor, Evanston Galleria, the Guarantors and the Controlling Parties is contractual, and not a mere recital, and the parties acknowledge and agree that no liability whatsoever is admitted on the part of Lender to any such party.

Section 5.4 Upon the execution of this Second Modification by Lender, the Controlling Parties shall execute and deliver to Lender the Controlling Party Guaranty in the form attached hereto as Exhibit B.

Section 5.5 Upon the execution of this Second Modification by Lender, Obligor (with the written consent and authorization of Beneficiary) shall execute and deliver to American General Realty Advisors, Inc. ("American General"), a trustee's deed conveying all of the right, title and interest of Obligor in the Mortgaged Property to American General, in the form attached hereto as Exhibit C (excepting only that such deed shall contain language satisfactory to Lender to negate the merger of the interests of the fee owner and the mortgagee in the Mortgaged Property), together with an assignment of all leases to Lender, a bill of sale, and an assignment of such other service contracts as Lender may request. In addition, Beneficiary shall execute and deliver to American General an Assignment of Beneficial Interests in the Trust in the form attached hereto as Exhibit D, together with a partnership resolution by Beneficiary authorizing and consenting thereto. Obligor and Beneficiary acknowledge and agree that if the Loan is

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not paid in full at its Maturity Date, Lender shall be entitled to foreclose upon its Mortgage, that there is little likelihood that there will be any equity of the Beneficiary in the Mortgaged Property because of the waiver by Lender of principal payments pursuant to this Second Modification and because of the accrual of the Interest Differential, and that there will be significant expenses incurred by Obligor and Beneficiary in contesting said foreclosure. Therefore, the aforesaid Deed is delivered by Obligor and the Assignment of Beneficial Interest by Beneficiary in order to save the cost and expense of such foreclosure in the event the Loan is not paid in full at Maturity and not as additional security for the Note. Until such time as American General elects to record said Deed, Obligor shall be conclusively deemed to be the owner of the Mortgaged Property and American General shall be under no obligation to record said Deed now or in the future. Obligor and Beneficiary acknowledge and agree that such conveyance shall not result in a merger of the fee interest in the Mortgaged Property and the Mortgagee's interest as Mortgagee and holder of the Senior Lien upon the Mortgaged Property. Obligor and Beneficiary acknowledge and agree that the aforesaid Deed, from and after the recording of said Deed by American General, shall be deemed to be an absolute and unconditional conveyance of fee title, including all legal, record and equitable title to the Mortgaged Property and all rights, title and privileges of Obligor and Beneficiary related thereto and is not intended to constitute a lien, equitable or legal, upon the Mortgaged Property and that such Deed is not intended as security for the Note; that there is no agreement or understanding, oral or written, between Lender, or American General

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and Obligor and/or Beneficiary relative to a reconveyance of the Mortgaged Property to Obligor or Beneficiary or to any division of any proceeds realized by Lender or American General from the Mortgaged Property by sale or otherwise, and that said Deed and the Assignment of Beneficial Interest are freely and voluntarily tendered by Obligor and Beneficiary in consideration for the agreement by Mortgagee to forebear in the exercise of such rights and remedies as Mortgagee may now have because the Note has matured, is unpaid and is therefore in default. Obligor and Beneficiary agree that American General may freely record said Deed at any time after the Maturity Date of the Note, as said Maturity Date may be accelerated by Lender (but not until then, as a concession by Lender in order to provide time for Beneficiary to refinance the Loan), without further notice to or consent required by Obligor and/or Beneficiary. The recording of said Deed shall not constitute an election of remedies nor in any way be in derogation of Lender's right to enforce any and all other rights and remedies it may have under the Loan Documents, including, but not limited to, the Controlling Party Guaranty and/or the right of the Lender to foreclose upon said Mortgage. Upon recording of the Deeds, Obligor and Evanston Galleria shall: (a) deliver possession of the Mortgaged Property to American General free and clear of all claims, rights or interests arising by, through or under Obligor and/or Beneficiary, except the rights of tenants, as tenants only, in possession under leases described in a rent roll furnished to Lender hereunder, the Senior Lien and the Junior Lien, (b) cause the existing Management Agreement to be terminated without liability or obligation to Lender or American General, and (c)

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cooperate fully with Lender or American General in an orderly and expeditious transfer of management and ownership and operation of the Mortgaged Property by American General.

Section 5.6 The Controlling Parties do hereby warrant and represent to the Lender that:

(a) First Dearborn Evanston Associates Limited Partnership ("FDEA") is a general partner in Evanston Galleria.

(b) First Dearborn Evanston Associates, Inc. ("Inc.") and First Dearborn Partners, an Illinois general partnership, are the sole general partners in FDEA.

(c) First Dearborn Income Properties L.P. II ("L.P. II") is a general partner in Evanston Galleria.

(d) FDIP, Inc., an Illinois corporation ("FDIP") and FDIP Associates II, an Illinois general partnership ("Associates") are the sole general partners in L.P. II. FDIP is the managing general partner in L.P. II.

(e) First Dearborn Partners, an Illinois general partnership ("Partners") and Hampshire Syndications, Inc., a New Hampshire corporation ("Hampshire") are the sole general partners in Associates.

(f) Ross and Block own one hundred percent (100%) of the voting stock in Inc.

(g) Ross and Block are the Secretary and President respectively of Inc. and are the sole directors of Inc.

(h) Ross and Block own one hundred percent (100%) of the voting stock in FDIP.

(i) Ross and Block are the President and Secretary respectively of FDIP and are the sole directors of FDIP.

(j) L.P. II and FDEA are the sole general partners of Evanston Galleria.

(k) The Second Amended and Restated Agreement of Limited Partnership of Evanston Galleria effective as of September 15, 1988 (the "Restated Agreement") has been amended by Amendment dated December 9, 1988, by Second Amendment dated October 31, 1989 and by Third Amendment dated February 26, 1993.

(l) Evanston Galleria is in good standing under the laws of the State of Illinois.

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(m) The Partnership Agreement of FDEA dated September 15, 1988 (the "FDEA Agreement") has been amended by Amendment No. 1 dated February 26, 1993.

(n) FDEA is in good standing under the laws of the State of Illinois.

(o) The First Amended and restated Limited Partnership Agreement of L.P. II dated February 1, 1989 (the "L.P. II Agreement") has not been amended or modified.

(p) L.P. II is in good standing under the laws of Delaware.

(q) Inc. is duly organized and in good standing under the laws of the State of Illinois.

(r) FDIP is duly organized and in good standing under the laws of the State of Illinois.

(s) FDEA has made its full capital contribution and paid the Net Cash Deficit, if any, in full (as said terms are defined in the Restated Agreement) required to be made or paid by FDEA thereunder.

(t) No notice has been received by FDEA, L.P. II, Inc. or FDIP or the Controlling Parties from any limited partner in Evanston Galleria alleging that FDEA and/or L.P. II is in default under the terms of the Restated Agreement or requesting that FDEA or L.P. II resign or be removed as a general partner pursuant to the Restated Agreement.

(u) To the best of the Controlling Parties' knowledge, no event has occurred or failed to occur which now, or with the passage of time, may result in the removal of FDEA and/or L.P. II as a general partner in Evanston Galleria for cause pursuant to the Restated Agreement.

(v) No notice has been received by Inc. or by the Controlling Parties from any limited partner in FDEA alleging that Inc. is in default under the terms of the FDEA partnership agreement.

(w) To the best of the Controlling Parties' knowledge, no event has occurred or failed to occur which now, or with the passage of time, may result in the removal of Inc. as the general partner in FDEA, for cause, pursuant to the FDEA Agreement.

(x) No notice has been received by FDIP or by the Controlling Parties from any limited partner in L.P. II alleging that FDIP is in default under the terms of the L.P. II Agreement.

(y) To the best of the Controlling Parties' knowledge, no event has occurred or failed to occur which now, or with

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the passage of time, may result in the removal of FDIP as the general partner in L.P. II for cause, pursuant to the L.P. II Agreement.

Section 5.7 The Controlling Parties do hereby covenant and agree that:

(a) They shall use their best efforts to cause Inc. to comply with all of its obligations and covenants under the FDEA Agreement.

(b) They shall use their best efforts to cause FDIP to comply with all of its obligations and covenants under the L.P. II Agreement.

(c) They shall use their best efforts and shall cause FDEA to use its best efforts to comply with all of its obligations and covenants under the Restated Agreement.

(d) They shall use their best efforts and shall cause L.P. II to use its best efforts to comply with all of its obligations and covenants under the Restated Agreement.

(e) Ross and Block shall not resign as Secretary and President of Inc. or as directors of Inc., nor as shareholders of Inc., or elect any other directors for Inc., nor shall Ross or Block sell or voluntarily convey, transfer or in any other way voluntarily assign any of the voting stock in Inc. which would result, individually, or in the aggregate, in the failure of Ross and Block to collectively own the Controlling Interest in the voting shares of stock in Inc.

(f) Ross and Block shall not resign as President and Secretary of FDIP or as directors of FDIP, nor as shareholders of FDIP, or elect any other directors for FDIP, nor shall Ross or Block sell or voluntarily convey, transfer or in any other way voluntarily assign any of the voting stock in FDIP which would result, individually, or in the aggregate, in the failure of Ross and Block to collectively own the Controlling Interest in the voting shares of stock in FDIP.

(g) They shall not cause, permit or acquiesce in the resignation or removal of Inc. as a general partner in FDEA nor shall they cause, permit or acquiesce in the admission of any other entity or person as an additional general partner in FDEA.

(h) They shall not cause, permit or acquiesce in the resignation or removal of FDIP as the managing general partner in L.P. II nor shall they cause, permit or acquiesce in the admission of any entity or person other than Associates as an additional general partner in L.P. II.

(i) They shall not cause, permit or acquiesce, either individually or through Inc. or FDEA in the resignation or

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removal of FDEA as a general partner in Evanston Galleria, nor shall they cause, permit or acquiesce, either individually or through Inc. or FDEA in the admission of any other entity or person as an additional general partner in Evanston Galleria.

(j) They shall not cause, permit or acquiesce, either individually or through FDIP or L.P. II in the resignation or removal of L.P. II as a general partner in Evanston Galleria, nor shall they cause, permit or acquiesce, either individually or through FDIP or L.P. II in the admission of any other entity or person as an additional general partner in Evanston Galleria.

(k) They shall use all reasonable efforts to cause Evanston Galleria, FDEA, Inc. and FDIP to remain in good standing and in full force and effect under the laws of Illinois.

(l) They shall use all reasonable efforts to cause L.P. II to remain in good standing and in full force and effect under the laws of Delaware.

(m) They shall not, individually or through Inc. or FDEA, cause, permit or acquiesce in the amendment or modification of either or both the FDEA Agreement or the Restated Agreement.

(n) They shall not, individually or through FDIP or L.P. II, cause, permit or acquiesce in the amendment or modification of the L.P. II Agreement if such amendment or modification pertains to the Mortgaged property or the Restated Agreement.

(o) They shall not, individually or through Inc. or FDEA or FDIP or L.P. II, cause, permit or acquiesce in the voluntary dissolution and/or liquidation of either FDEA or L.P. II or Evanston Galleria.

(p) They shall not, individually or through Inc. or FDEA or FDIP or L.P. II, cause, permit or acquiesce in the filing of any Voluntary Bankruptcy (as that term is defined in the Guaranty/Indemnification Agreement of even date herewith by the Controlling Parties to Lender) by Evanston Galleria.

## 6. Miscellaneous

Section 6.1 Captions under the article numbers of this Second Modification are for convenience and reference only and in no way define, limit, amplify, or describe the scope or intent of this Second Modification, and in no way affect or constitute a part of this Second Modification.

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Section 6.2 Lender acknowledges that the Lender and its agents in the past may have accepted, without exercising the remedies to which the Lender was entitled, payments and performance by the Obligor or Evanston Galleria that constituted Events of Default under the Original Note and the Original Mortgage, as modified by the First Modification. The Obligor and Evanston Galleria acknowledge that no such acceptance or grace granted by the Lender or its agents in the past, or the Lender's agreement to this Second Modification, has in any manner diminished or otherwise affected Lender's right in the future to insist that the Obligor or Evanston Galleria strictly comply with the terms of the Note and the Mortgage. Furthermore, the Obligor and Evanston Galleria specifically acknowledge that any future grace or forgiveness of default by the Lender shall not constitute a waiver or diminishment of any right of the Lender with respect to any future default of the Obligor or Evanston Galleria, whether or not similar to any default with respect to which the Lender has in the past chosen, or may in the future choose, not to exercise all of the rights and remedies granted to it under the Note and the Mortgage.

Section 6.3 Except as expressly modified by the First Modification and this Second Modification, all terms and provisions of the Original Note and the Original Mortgage remain unchanged and continue, unabated, in full force and effect. All liens, security interests, mortgages, and assignments granted or created by or existing under the Original Mortgage, as modified or supplemented by the First Modification, as hereby amended, remain unchanged and continue, unabated, in full force and effect, to secure the Obligor's obligation to repay the Note. Nothing herein is intended to,

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nor shall it, waive, modify, release, discharge or affect the Evanston Guaranty.

Section 6.4 This Second Modification supersedes and merges all prior and contemporaneous promises, representations, and agreements, including, without limitation, that certain Letter Agreement dated June 26, 1996 by and between Lender on the one hand, and Evanston Galleria on the other hand. No modification of this Second Modification, the Note, or the Mortgage, or waiver of rights under any of the foregoing, shall be effective unless made by supplemental agreement, in writing, executed by the Lender and Evanston Galleria. The Lender, Obligor, Evanston Galleria and the Controlling Parties further agree that this Second Modification may not in any way be explained or supplemented by a prior, existing, or future course of dealings between the parties or by any prior, existing, or future performance between the parties pursuant to this Second Modification or otherwise.

Section 6.5 From time to time the Obligor, Evanston Galleria and the Controlling Parties shall execute and deliver to the Lender such other and further documents and instruments evidencing, securing, or pertaining to the Note, the Mortgage, the Mortgaged Property or this Second Modification, as shall be reasonably requested by the Lender so as to evidence or effect the terms and conditions hereof.

Section 6.6 The Lender from time to time may request that the Obligor and Evanston Galleria confirm in writing the then unpaid principal balance of the Note, and the Obligor and Evanston Galleria covenant and agree that they promptly will comply with each such request made by the Lender; provided, however, that

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irrespective of whether or not the Lender requests, or the Obligor or Evanston Galleria execute such written confirmations, the calculations made by the Lender of the unpaid principal balance of the Note from time to time shall be presumed to be in compliance with the provisions of the Note, and if in compliance with the provisions of the Note, shall be binding, absent manifest error.

Section 6.7 This Second Modification shall be deemed a contract made under the laws of the State of Illinois and shall be construed and enforced in accordance with and governed by the laws of the State of Illinois.

Section 6.8 If any covenant, condition, provision herein contained is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not in any way affect any other covenant, condition, or provision herein contained.

Section 6.9 It is expressly agreed by the parties hereto that time is of the essence with respect to this Second Modification.

Section 6.10 The parties acknowledge and confirm that each of their respective attorneys has participated jointly in the review and preparation of this Second Modification and that it has not been written solely by counsel for one party. The parties hereto therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to or may be resolved against the drafting party shall not be employed in the interpretation of this Second Modification to favor either party against the other. Obligor, Beneficiary and the Controlling Parties acknowledge that each has thoroughly read and reviewed the terms and provisions of this Second Modification and is familiar with same, that the terms and

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provisions contained herein are clearly understood by each and have been fully and unconditionally consented to by each, and that each has had full benefit and advice of counsel of its own selection, or the opportunity to obtain the benefit and advice of counsel of its own selection, in regard to understanding the terms, meaning and effect of this Agreement, and that the execution of this Second Modification is done freely, voluntarily, with full knowledge, and without duress, and that in executing this Second Modification, each is relying on no other representations either written or oral, express or implied, made to Obligor, Beneficiary or the Controlling Parties by any other party hereto, and that the consideration received by Obligor, Beneficiary and the Controlling Parties hereunder has been actual and adequate.

Section 6.11 The use of the words "hereof", "herein", "hereunder", and words of similar import shall refer to this entire Second Modification and not to any particular article or section of this Second Modification, unless the context clearly indicates otherwise.

Section 6.12 The Obligor and Evanston Galleria covenant and agree that they promptly shall pay all expenses incurred by the Lender in connection with this Second Modification, including, without limitation, title policy endorsement premiums, recording fees and Lender's attorneys' fees and other costs of the Lender incurred in connection with this Second Modification (provided however, that such expenses and the legal expenses of Beneficiary in connection herewith (to the extent approved by Lender) shall be deemed to be Operating Expenses, payable by Beneficiary from the Excess Cash Flow of the Mortgaged Property).

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Section 6.13 This Second Modification is executed and delivered by Obligor, not personally, but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee. No personal liability shall be asserted or be enforceable against Obligor personally or, except as provided in the Guaranties and/or the Controlling Party Guaranty, any person interested beneficially or otherwise in the Mortgaged Property described in the Mortgage or in the property or funds at any time subject to the Trust Agreement because of or in respect of the Note or this Second Modification or the making, issuance or transfer hereof, all such liability if any, being expressly waived by each taker and holder of the Note; and each successive holder of the Note shall accept the Note upon the express condition that in case of default in the payment of the Note or any installment of principal or interest, or any sum when due hereunder, the remedies of the holder shall be any or all (in such order or priority as Lender may elect in its sole discretion and without waiver of any right to enforce any of its other rights and remedies hereunder) of:

(a) foreclosure of the Mortgage in accordance with the terms and provisions set forth in the Mortgage.

(b) action against any other security at any time given to secure the payment of the Note;

(c) action to enforce the personal liability of the Guarantors under the Guaranties or any other guarantor under any other separate guaranty agreement; and/or

(d) action to enforce the personal liability of the Controlling Parties under the Controlling Party Guaranty.

Section 6.14 Other than as expressly set forth herein, this Second Modification is not intended to alter any of the limitation of liability provisions contained in the Original Note, the Original Mortgage, the Evanston Assignment, the Trustee Assignment,

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the Collateral Assignment, the Evanston Guaranty, the Slaven/Ashkin Guaranty or any other instrument executed by the Obligor and/or Evanston Galleria in favor of the Lender, which governs or secures the payment of the Original Note.

Section 6.15 The Note and Mortgage, as modified by the First Amendment, define an Event of Default and provide for notice to Obligor and/or Beneficiary in case of certain enumerated defaults by Obligor and/or Beneficiary. Nothing herein is intended to waive, release or modify in any way any of said provisions. However, Lender hereby agrees that in the case of any default under this Second Modification, other than under Section 3.4(a), (b) or (c) hereof, Beneficiary may cure said default within ten (10) days after written mandatory notice by Lender to Beneficiary of such default, prior to the acceleration of the Maturity Date of the Note.

## 7. Priority of Lien

Section 7.1 The execution, delivery, and performance of this Second Modification shall in no manner be deemed to waive, affect, or impair the first lien priority of the Original Mortgage or the priority of any other liens of Lender securing payment of the Original Note.

## 8. Counterpart Execution

Section 8.1 This Agreement may be executed in counterpart copies which when taken together shall constitute one instrument,

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EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 1996, but agreed to be effective as of the Effective Date.

LASALLE NATIONAL TRUST, N.A. (F/K/A LA SALLE NATIONAL BANK), NOT PERSONALLY, BUT AS TRUSTEE, AS AFORESAID

(Seal)  
Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
"OBLIGOR"

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*HW* AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY

(Seal)  
Attest:

By: *AWKJ*  
Name: *Ambert R. Owen, Jr.*  
Title: *Real Estate Investment Officer*  
"LENDER"

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED  
AS TO CONTRACT COMPLIANCE  
PER SPM NO. 132  
LAW DEPARTMENT  
AGC

CONTROL NO. *135-124*  
DATE *9-20-96*  
SIGNED: *[Signature]*

EVANSTON GALLEXIA LIMITED PARTNERSHIP, an Illinois limited partnership, by its undersigned sole general partners

By: FIRST DEARBORN EVANSTON ASSOCIATES LIMITED PARTNERSHIP, an Illinois limited partnership, by its undersigned general partners

By: FIRST DEARBORN EVANSTON ASSOCIATES, INC., an Illinois corporation

(Seal)  
Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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# UNOFFICIAL COPY

EXECUTED this 12 day of September, 1996, but agreed to be effective as of the Effective Date.

LASALLE NATIONAL TRUST, N.A. (F/K/A LA SALLE NATIONAL BANK), NOT PERSONALLY, BUT AS TRUSTEE, AS AFORESAID

By: [Signature]  
Name: Carline Dek  
Title: Vice President

(Seal)  
Attest:

[Signature]  
Name: W. H. Stack  
Title: Notary Public

"OBLIGOR"

AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Seal)  
Attest:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"LENDER"

EVANSTON GALLERIA LIMITED PARTNERSHIP, an Illinois limited partnership, by its undersigned sole general partners

By: FIRST DEARBORN EVANSTON ASSOCIATES LIMITED PARTNERSHIP, an Illinois limited partnership, by its undersigned general partners

By: FIRST DEARBORN EVANSTON ASSOCIATES, INC., an Illinois corporation

(Seal)  
Attest:

[Signature]  
Name: Barbara J Mohr  
Title: \_\_\_\_\_

By: [Signature]  
Name: Robert T. Hall  
Title: Vice Pres

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(Seal)  
Attest:

Barbara J Mohr  
Name: Barbara J Mohr  
Title: \_\_\_\_\_

By: FIRST DEARBORN PARTNERS,  
an Illinois general  
partnership

By: [Signature]  
Name: Robert J. Ross  
Title: Partner

(Seal)  
Attest:

Barbara J Mohr  
Name: Barbara J Mohr  
Title: \_\_\_\_\_

By: FIRST DEARBORN INCOME  
PROPERTIES L.P. II, a Delaware  
limited partnership, by its  
undersigned general partners

By: FDIP, INC., an Illinois  
corporation, its managing  
general partner

By: [Signature]  
Name: Robert J. Ross  
Title: Pres

(Seal)  
Attest:

Barbara J Mohr  
Name: Barbara J Mohr  
Title: \_\_\_\_\_

By: FDIP ASSOCIATES II, an  
an Illinois limited  
partnership, its associate  
general partner

By: FIRST DEARBORN PARTNERS,  
an Illinois general  
partnership

By: [Signature]  
Name: Robert J. Ross  
Title: Partner

(Seal)  
Attest:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: HAMPSHIRE SYNDICATIONS,  
INC., a New Hampshire  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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By: FIRST DEARBORN PARTNERS,  
an Illinois general  
partnership

(Seal)  
Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: FIRST DEARBORN INCOME  
PROPERTIES L.P. II, a Delaware  
limited partnership, by its  
undersigned general partners

(Seal)  
Attest:

By: FDIP, INC., an Illinois  
corporation, its managing  
general partner

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: FDIP ASSOCIATES II, an  
an Illinois limited  
partnership, its associate  
general partner

(Seal)  
Attest:

By: FIRST DEARBORN PARTNERS,  
an Illinois general  
partnership

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Seal)  
Attest:

By: HAMPSHIRE SYNDICATIONS,  
INC., a New Hampshire  
corporation

*cc c c c*  
\_\_\_\_\_  
Name: Charles C. Cornelio  
Title: General Counsel & Secretary

By: *[Signature]*  
\_\_\_\_\_  
Name: Ryan Angarella  
Title: President & Director

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FIRST DEARBORN PROPERTIES, INC.,  
an Illinois corporation

(Seal)  
Attest:

Barbara J Mohr  
Name: Barbara J Mohr  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: ROBERT S. ROSS  
Title: PRES.  
as a Controlling Party

Robert S. Ross  
ROBERT S. ROSS, as a Controlling  
Party

Bruce H. Block  
BRUCE H. BLOCK, as a Controlling  
Party

This instrument is executed by the undersigned as a limited partner and/or special limited partner in Evanston Galleria and/or in partners in Evanston Galleria and/or in partners in partners in Evanston Galleria to attest their consent to this Agreement and particularly the provisions of Articles 3 and 5 hereof.

(Seal)  
Attest:

HAMPSHIRE SYNDICATIONS, INC.,  
a New Hampshire corporation

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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(Seal)  
Attest:

FIRST DEARBORN PROPERTIES, INC.,  
an Illinois corporation

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
as a Controlling Party

ROBERT S. ROSS, as a Controlling  
Party

BRUCE H. BLOCK, as a Controlling  
Party

This instrument is executed by the undersigned as a limited partner and/or special limited partner in Evanston Galleria and/or in partners in Evanston Galleria and/or in partners in partners in Evanston Galleria to attest their consent to this Agreement and particularly the provisions of Articles 3 and 5 hereof.

(Seal)  
Attest:

HAMPSHIRE SYNDICATIONS, INC.,  
a New Hampshire corporation

    C. C. C.      
Name: Charles C. Cornelio  
Title: General Counsel & Secretary

By: \_\_\_\_\_  
Name: Ronald Ansell  
Title: President & Director

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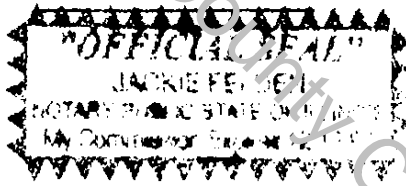
STATE OF ILLINOIS §  
§  
COUNTY OF COOK §

I, the undersigned, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT Corinne Bek, ~~the President~~ of LASALLE NATIONAL TRUST (F/K/A LA SALLE NATIONAL BANK), and NANCY A. STACK, Assistant Secretary, of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, as of the free and voluntary act of said Bank; and said Assistant Secretary did also then and there acknowledge that she, as custodian of the Corporate Seal of said Bank, did affix said corporate seal of said Bank to said instrument as her own free and voluntary act, and as the free and voluntary act of said Bank.

GIVEN under my hand and Notarial Seal of office this 16<sup>th</sup> day of Sept, 1996.

Jackie Felder  
Notary Public

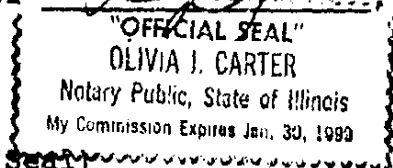
(Seal)  
My Commission Expires:



STATE OF ILLINOIS §  
§  
COUNTY OF Cook §

I, Olivia Carter, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT Bruce H. Block, President of FIRST DEARBORN EVANSTON ASSOCIATES, INC., an Illinois corporation, a general partner of First Dearborn Evanston Associates Limited Partnership, an Illinois limited partnership, which is a general partner of Evanston Galleria Limited Partnership, an Illinois limited partnership, and Robert S. Ross, ~~Secretary of said corporation~~, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Bruce H. Block and Robert S. Ross respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation.

GIVEN under my hand and Notarial Seal of office this 12 day of Sept, 1996.



Olivia I. Carter  
Notary Public

(Seal)  
My Commission expires 1/30/99

Robert S. Ross

96-72566-4

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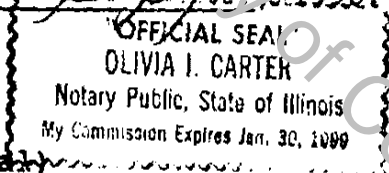
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STATE OF ILLINOIS §  
COUNTY OF Cook §

I, Olivia Carter, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT Robert S. Ross, President of FDIP, INC., an Illinois corporation, a general partner of First Dearborn Income Properties L.P. II, a Delaware limited partnership which is a general partner of Evanston Galleria Limited Partnership, an Illinois limited partnership, and ~~Bruce H. Block, Secretary of said corporation,~~ personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Robert S. Ross and ~~Bruce H. Block~~, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation.

GIVEN under my hand and Notarial Seal of office this 14 day of February, 1996.



Olivia I. Carter  
Notary Public

(Seal) My Commission expires 1/30/00

STATE OF TEXAS §  
COUNTY OF HARRIS §

I, \_\_\_\_\_, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT \_\_\_\_\_ of AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY, a corporation, and \_\_\_\_\_ of said corporation, and \_\_\_\_\_ of said corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation; and said \_\_\_\_\_ did also then and there acknowledge that he, as custodian of the Corporate Seal of said corporation, did affix said corporate seal of said corporation to said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation.

GIVEN under my hand and Notarial Seal of office this \_\_\_\_ da of \_\_\_\_\_, 1996.

\_\_\_\_\_  
Notary Public

(Seal) My Commission expires \_\_\_\_\_

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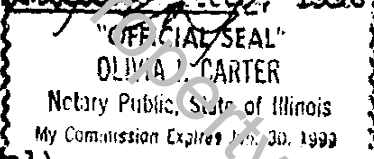
Property of Cook County Clerk's Office

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STATE OF ILLINOIS §  
COUNTY OF COOK §

I, Olivia Carter, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT Robert S. Ross, 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 his own free and voluntary act, and for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal of office this 14 day of February 1996.



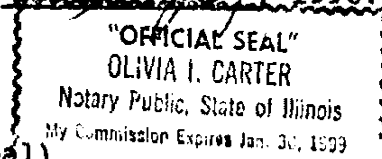
Olivia I. Carter  
Notary Public

(Seal) My Commission expires 1/30/99

STATE OF ILLINOIS §  
COUNTY OF COOK §

I, Olivia Carter, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT Bruce H. Block, 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 his own free and voluntary act, and for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal of office this 14 day of February 1996.



Olivia I. Carter  
Notary Public

(Seal) My Commission expires 1/30/99

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11/11/2011

11/11/2011

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STATE OF ILLINOIS §  
                                          §  
COUNTY OF COOK §

I, Olivia Carter, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT Robert S. Pass, President of FIRST DEARBORN PROPERTIES, INC., an Illinois corporation, and ~~President~~ Secretary of said corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such he and she respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation.

GIVEN under my hand and Notarial Seal of office this 12 day of July, 1996.

"OFFICIAL SEAL"  
OLIVIA I. CARTER  
Notary Public, State of Illinois  
My Commission Expires Jan. 30, 1999  
(Seal)  
My Commission expires

Olivia I. Carter  
Notary Public

11/2/96

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COOK County Clerk's Office

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## EXHIBIT "A"

### EVANSTON GALLERIA LIMITED

#### TRACT I:

LOTS 7, 8, 9, 10, 11, 12 AND 13 IN THE RESUBDIVISION OF BLOCK 17 IN EVANSTON IN THE NORTH WEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPTING THEREFROM), THAT PORTION OF LOTS SEVEN TO ELEVEN AFORESAID, (TAKEN AS ONE TRACT) IN THE RESUBDIVISION OF BLOCK SEVENTEEN IN EVANSTON, DESCRIBED AS FOLLOWS TO WIT:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT SEVEN THENCE RUNNING SOUTH ALONG THE EAST LINE OF SAID LOT SEVEN, A DISTANCE OF EIGHTY FEET; THENCE RUNNING WEST ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID LOT SEVEN A DISTANCE OF THIRTY-FIVE FEET; THENCE SOUTH ALONG A LINE PARALLEL WITH THE EAST LINE OF SAID LOT SEVEN, A DISTANCE OF FIVE FEET; THENCE RUNNING WEST ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID LOTS SEVEN TO ELEVEN, A DISTANCE OF ONE HUNDRED EIGHTY-FIVE FEET; THENCE RUNNING NORTH ALONG A LINE PARALLEL WITH THE EAST LINE OF SAID LOT ELEVEN, BEING TWO HUNDRED TWENTY FEET FROM THE NORTH EAST CORNER OF SAID LOT SEVEN; THENCE EAST ALONG THE NORTH LINE OF SAID LOTS SEVEN TO ELEVEN TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### TRACT II:

PERPETUAL NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT OF EASEMENT DATED AUGUST 4, 1975 AND RECORDED AUGUST 14, 1975 AS DOCUMENT NUMBER 23187221 AND BY GRANT OF EASEMENT DATED APRIL 6, 1989 AND RECORDED APRIL 10, 1989 AS DOCUMENT NUMBER 89154855 FOR INGRESS AND EGRESS OF PERSONS AND VEHICLES AND FOR THE LOADING AND UNLOADING OF TRUCKS AND OTHER CARRIERS OVER THE WEST 28.5 FEET OF THAT PART OF LOTS 7 TO 11, INCLUSIVE, IN THE RESUBDIVISION OF BLOCK 17 IN EVANSTON IN THE NORTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 7, THENCE RUNNING SOUTH ALONG AND UPON THE EAST LINE OF SAID LOT 7 A DISTANCE OF 80 FEET; THENCE RUNNING WEST ALONG AND UPON A LINE PARALLEL WITH THE NORTH LINE OF SAID LOT 7 A DISTANCE OF 35 FEET; THENCE SOUTH ALONG AND UPON A LINE PARALLEL WITH THE EAST LINE OF SAID LOT 7 A DISTANCE OF 5 FEET; THENCE RUNNING WEST ALONG AND UPON A LINE PARALLEL WITH THE NORTH LINE OF SAID LOTS 7 TO 11 A DISTANCE OF 185 FEET; THENCE RUNNING NORTH ALONG AND UPON A LINE PARALLEL WITH THE EAST LINE OF SAID LOT 7, A DISTANCE OF 85 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 11, 226 FEET FROM THE NORTHEAST CORNER OF SAID LOT 7, THENCE ALONG AND UPON THE NORTH LINE OF SAID LOTS 11 TO 7, INCLUSIVE, TO THE POINT OF BEGINNING.

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## TRACT III:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED UNDER SECTION 4 OF THAT CERTAIN INDENTURE MADE THE 12TH DAY OF JANUARY, 1926 AS DOCUMENT NUMBER 9157485 FOR PASSAGEWAY AND PRIVATE ALLEY PURPOSES OVER THE SOUTH 5 FEET OF THE FOLLOWING DESCRIBED PREMISES AND FOR LIGHT AND AIR ABOVE THE HEIGHT OF SIXTY FEET OR FOUR STORIES, OVER THE FOLLOWING DESCRIBED LAND:

THAT PORTION OF LOTS SEVEN (7) TO ELEVEN (11) INCLUSIVE, IN THE RESUBDIVISION OF BLOCK SEVENTEEN (17) IN EVANSTON, COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT SEVEN (7) IN THE SAID RESUBDIVISION OF SAID BLOCK SEVENTEEN (17) IN EVANSTON, COOK COUNTY, ILLINOIS, THENCE RUNNING SOUTH ALONG AND UPON THE EAST LINE OF SAID LOT SEVEN (7), A DISTANCE OF EIGHTY (80) FEET; THENCE RUNNING WEST ALONG AND UPON A LINE PARALLEL WITH THE NORTH LINE OF SAID LOT SEVEN (7) A DISTANCE OF THIRTY-FIVE (35) FEET, THENCE SOUTH ALONG AND UPON A LINE PARALLEL WITH THE EAST LINE OF SAID LOT SEVEN (7), A DISTANCE OF FIVE (5) FEET; THENCE RUNNING WEST ALONG AND UPON A LINE PARALLEL WITH THE NORTH LINE OF SAID LOTS SEVEN (7) TO ELEVEN (11) A DISTANCE OF ONE HUNDRED AND EIGHTY-FIVE (185) FEET; THENCE RUNNING NORTH ALONG AND UPON A LINE PARALLEL WITH THE EAST LINE OF SAID LOT SEVEN (7) A DISTANCE OF EIGHTY-FIVE (85) FEET TO A POINT IN THE NORTH LINE OF SAID LOT ELEVEN (11), TWO HUNDRED AND TWENTY (220) FEET FROM THE NORTH EAST CORNER OF SAID LOT SEVEN (7), THENCE ALONG AND UPON THE NORTH LINE OF SAID LOT ELEVEN (11) AND THE NORTH LINE OF SAID LOTS (10) TO SEVEN (7) (INCLUSIVE) TO THE POINT OF BEGINNING.

Address of Property: 1700 Sherman  
Evanston, Illinois

Permanent Index No.: 11-18-0126-013-0000

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EXHIBIT B

## GUARANTY/INDEMNIFICATION AGREEMENT

THIS GUARANTY INDEMNIFICATION AGREEMENT (hereinafter referred to as the "Guaranty" and/or the "Guaranty/Indemnification Agreement"), is executed and delivered \_\_\_\_\_, 1996, by FIRST DEARBORN PROPERTIES, INC., an Illinois corporation, ROBERT S. ROSS, AND BRUCE H. BLOCK (individually and collectively the "Guarantors"), to AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY (hereinafter referred to as "Lender").

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

WHEREAS, Lender made a loan to LaSalle National Trust (F/K/A LaSalle National Bank) ("Obligor") in the sum of Eight Million Two Hundred and Fifty Thousand Dollars (\$8,250,000.00) (the "Loan Amount") on April 5, 1989.

WHEREAS, on April 5, 1989, Obligor executed a promissory note (the "Original Note"), in the original principal sum of Eight Million Two Hundred Fifty Thousand Dollars (\$8,250,000.00), payable to the order of the Lender to evidence the loan made by Lender to Obligor (the "Loan").

WHEREAS, the Obligor's obligation to repay the Original Note is secured by, inter alia (i) that certain Mortgage and Security Agreement (the "Original Mortgage"), of even date with the Original Note, between Obligor, as mortgagor, and Lender, as mortgagee, recorded April 10, 1989, in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 89154856, and covering and encumbering that certain real property (herein and herein referred to as the "Mortgaged Property"), (ii) Assignment of Lessor's Interest in Leases ("Evanston Assignment") dated April 5, 1989, executed by Evanston Galleria Limited Partnership ("Beneficiary") as assignor, and Lender, as assignee, recorded April 10, 1989, in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 89154858; (iii) Assignment of Lessor's Interest in leases ("Trustee Assignment") dated April 5, 1989, executed by Obligor, as assignor, and Lender, as assignee, recorded April 10, 1989, in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 89154858; (iv) Collateral Assignment of Beneficial Interest Under Land Trust ("Collateral Assignment") dated April 5, 1989, executed by Beneficiary and acknowledged and accepted by Lender and Obligor; and (v) UCC Financing Statements ("Financing Statements") dated April 5, 1989, filed April 11, 1989, in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 89 U 08727 and filed April 14, 1989, with the Secretary of State of the State of Illinois as Document No. 2561.24.

WHEREAS, on February 23, 1993 (but effective as of August 1, 1992) Obligor, Beneficiary and the Lender entered into that certain First Modification Agreement, ("the First Modification") which amongst other matters, extended the Maturity Date of the Note until

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11/18/2010

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May 1, 1996 and modified the interest rate payable upon the indebtedness evidenced by the Note.

WHEREAS, the Note is now due and payable in full and Obligor and Beneficiary acknowledge that there does not exist any defense, setoff or credit against the Loan and that Lender is now entitled to enforce all of its rights and remedies under the Loan Documents, including, but not limited to, the commencement of an action to foreclose upon its Mortgage.

WHEREAS, Obligor and the Beneficiary have requested that Lender agree to modify and extend the Loan pursuant to the Second Modification Agreement of even date herewith (the "Second Modification") and Lender is amenable to such request, subject to the terms hereof.

WHEREAS, Lender is concerned that the Obligor or Beneficiary may voluntarily commence an action under Title II of the U.S. Code, as amended, or any similar state statute affording rights to debtors in derogation of, or interference with, Lender's right to foreclose upon the Mortgage and to otherwise enforce its rights and remedies under the Loan Documents;

WHEREAS, the Guarantors each have, directly or indirectly, a financial interest in Beneficiary and the Mortgaged Property and will therefore benefit if the Second Modification is entered into by Lender.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Lender to consummate such Second Modification with Obligor and Beneficiary, Guarantors do hereby jointly and severally absolutely and unconditionally, covenant and agree as follows:

1. All references herein to the Note, the Mortgage or the Loan Documents shall mean the Original Note, the Original Mortgage and the Original Loan Documents, as modified by the First Modification and as subsequently modified by the Second Modification.

2. Upon failure of the Beneficiary to make any payment to Lender of principal, interest or other sum due under the Note or any other amount becoming due and payable under the Note, the Mortgage or any of the other Loan Documents when and as the same becomes due and payable or within the grace period, if any, provided in the Note, the Mortgage or any of the other Loan Documents for the payment of the same or upon the failure of the Obligor and/or Beneficiary to perform or to comply with any of the other terms and conditions of any of the Loan Documents and if the same is not performed or complied with within the grace period, if any, provided in the Loan Documents, Lender, at its sole option, may accelerate the Maturity Date under the Note, pursuant to the terms of the Second Modification, in which event Guarantors do hereby absolutely and unconditionally jointly and severally cove-

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nant and agree to pay to Lender, within fifteen (15) days of demand therefor: (a) the entire principal balance of the Note outstanding at the time of Lender's election to accelerate, (b) any accrued but unpaid interest on said Note, including any accrued but unpaid Interest Differential to the extent said Interest Differential is due and payable under Section 3.4 of the Second Modification, (c) any unpaid real estate tax escrow deposit required under the Note, (d) any late charges or penalties then due under the Note or Loan Documents, (e) all other sums or charges then due and payable under the Note, the Mortgage or any of the other Loan Documents (the total of said amounts being hereinafter called the "Guaranteed Obligation"). Lender shall not be obligated to proceed against, or exhaust any other remedies it may have under the Note, the Mortgage or any of the Loan Documents, or resort to any other security held by Lender prior to enforcing the obligations of the Guarantors hereunder without exhausting its remedies against any or all of the Guarantors. In addition Lender may proceed against any one or more of the Guarantors hereunder. Any and all payments due hereunder shall be made in lawful money of the United States of America. The Guaranteed Obligation shall bear interest at the Default Rate as provided in the Note from the date of demand made by Lender until paid in full.

3. Guarantors acknowledge that each shall remain liable hereunder whether or not it or he retains a financial interest in Beneficiary or in the Mortgaged Property as described in the Loan Documents.

4. The Guarantors' obligations hereunder shall continue in full force and effect notwithstanding any foreclosure action prosecuted by Lender against the Mortgaged Property or the acceptance hereby by American General Realty Advisors, Inc. of any deed in lieu of foreclosure with respect thereto from Obligor. No set-off or counterclaim which any one or more of the Guarantors may have against Obligor or Beneficiary shall in any way affect the obligations of Guarantors hereunder. So long as this Guaranty remains in effect, Guarantors agree that the Guarantors shall have no right of subrogation, reimbursement or indemnity whatsoever with respect to the debts, liabilities and obligations of Obligor and/or Beneficiary covered by the Loan Documents or this Guaranty, or to any monies due and unpaid thereon or to any collateral security for the same. Guarantors further waive the priority of all present and future debts and obligations owed by Obligor or Beneficiary to any Guarantor in favor of Lender, all such debts and obligations being subordinate as to lien, time of payment and in all other respects to the debts and obligations of Obligor and Beneficiary to Lender in connection with the Loan, said waiver to remain effective and in force for thirteen (13) months after payment in full and satisfaction of all obligations of Obligor and Beneficiary to Lender in connection with the Loan.

5. Guarantors waive notice of the acceptance of this Guaranty. Guarantors further waive presentment, demand, protest, notice of protest, notice of dishonor, notice of the occurrence of default

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under the Note, the Mortgage or any of the Loan Documents, or of any change in Obligor's or Beneficiary's financial condition. Guarantors agree that no extension of time, whether one or more, nor any other indulgence granted by Lender to Obligor or Beneficiary, and no omission or delay on Lender's part in exercising any right against, or in taking any action to collect from or pursue Lender's remedies against Obligor or Beneficiary or any Guarantor, will release, discharge or modify the duties of any Guarantor, and Guarantors hereby waive all suretyship defenses. Guarantors agree that Lender may, without notice to or further consent from Guarantors, release any collateral, security or other guarantees, now held or hereafter acquired, or substitute other collateral, security or other guarantees, and no such action will release, discharge, or modify the duties of Guarantor hereunder. Guarantors further agree that Lender will not be required to pursue or exhaust any of Lender's rights or remedies against Obligor, Beneficiary or any party constituting the Guarantor with respect to payment of the Loan, or to pursue or exhaust any of its rights or remedies with respect to any collateral, security or other guarantees given to secure the Loan, or to take any action of any sort, prior to demanding payment from or pursuing its remedies against Guarantors and each of the parties constituting the Guarantor, jointly and severally.

6. If the Note is assigned by Lender, this Guaranty will inure to the benefit of such assignee, and to the benefit of any subsequent assignee, to the extent of the assignment(s), provided that no assignment will operate to relieve Guarantor from any duty to Lender hereunder with respect to any unassigned portion thereof.

7. Time is of the essence in all respects hereunder. This Guaranty/Indemnification Agreement shall remain in full force and effect until all sums payable under the Note, the Mortgage and the Loan Documents have been paid and all covenants, conditions and agreements of Obligor and Beneficiary under the Note, the Mortgage and the Loan Documents have been performed. This Guaranty constitutes the entire agreement and understanding and supersedes all prior agreements and understandings, both written and oral, between the parties with respect hereto. If any clause or provision of this Guaranty is held illegal, invalid or unenforceable by any court, such holding shall not invalidate the entire Guaranty; rather, the Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable clause or provision had not been contained herein. As used herein, the singular shall include the plural and the use of any gender shall include all genders, as the context requires. This Guaranty shall be construed in accordance with the law of the State of Illinois.

8. Nothing herein contained shall be deemed to be a waiver of any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provision of the Bankruptcy Reform Act of 1978 to file a claim for the full amount of the indebtedness secured by the Mortgage or to require that all the Mortgaged Property shall continue to secure all of the indebtedness owing to Lender in ac

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cordance with the Loan Documents. The obligations of the Guarantors under this Guaranty shall not be affected, modified or impaired because of the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets of the Obligor and/or the Beneficiary or any Guarantor, however effected, or receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganizations, arrangement, composition with creditors or readjustment or other similar proceedings affecting either the Obligor, the Beneficiary, any Guarantor, or any of the assets of any of them, or any allegation or contest of the validity of this Guaranty, the Note, the Mortgage, the Second Modification or any of the Loan Documents, or the disaffirmance of the Note, the Mortgage, the Second Modification or any of the Loan Documents in any such proceeding.

9. This Guaranty was executed in Cook County, Illinois.

10. Guarantors hereby agree that all actions to enforce the terms and provisions of this Guaranty shall be brought and maintained only within the State of Illinois and Guarantors hereby consent to the exclusive jurisdiction of any court within Cook County, Illinois, waive personal service of all process and hereby consent that such service may be made by registered or certified mail, directed to Guarantors at the respective addresses hereinafter set forth. Guarantors hereby expressly waive any and all rights which it or he may have to make any objections based on jurisdiction or venue, to any suit brought to enforce this Guaranty in the State of Illinois in accordance with the above provisions.

11. Any notice or demand to be given hereunder shall be effectively given if made in writing, delivered to Guarantors (for the purpose of this Guaranty, Guarantors agree that any notice sent to the address below for the respective Guarantor shall be deemed to be proper notice upon said Guarantor) or mailed by certified mail to Guarantors at the following address, or at such other address as any party may furnish the other in writing:

First Dearborn Properties,  
Inc.

154 W. Hubbard Street  
Suite 250  
Chicago, Illinois 60610

Bruce H. Block

c/o First Dearborn Properties,  
Inc.  
154 W. Hubbard Street  
Suite 250  
Chicago, Illinois 60610

Robert S. Ross

c/o First Dearborn Properties,  
Inc.  
154 W. Hubbard Street  
Suite 250  
Chicago, Illinois 60610

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With a copy to:

Allan L. Yusim, Esq.  
Saitlin, Patzik, Frank &  
Samotny, Ltd.  
150 South Wacker Drive  
Chicago, Illinois 60606

12. Notwithstanding anything to the contrary contained in this Guaranty, Lender consents and agrees that it will not bring any action or proceeding to enforce any of its rights or remedies against any party constituting the Guarantor hereunder unless and only if both of Conditions A and B herein have occurred: (A) Obligor or Beneficiary or any general partner in Beneficiary, any Guarantor, or any affiliate of any of the aforesaid (as affiliate is hereinafter defined) shall (i) file with, consent to, or acquiesce in the filing of any petition against Obligor, the Beneficiary or the Mortgaged Property under Title 11 of the United States Code, as amended; (ii) seek, consent to, or not contest the appointment of a receiver or trustee for the Mortgaged Property; (iii) file in any court of competent jurisdiction, under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, a petition for any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief, the effect of which is, in whole or in part, to stay, either temporarily or permanently, the enforcement by Lender of the rights and remedies of a secured lender against Obligor, Beneficiary or the Mortgaged Property; or (iv) file in any court of competent jurisdiction a petition seeking to prevent the recording of, or to set aside, void or rescind the recording of any deed in lieu of foreclosure granted to Lender or any affiliate of Lender by Obligor and/or Beneficiary for the Mortgaged Property (collectively and individually a "Voluntary Bankruptcy") and (B) (1) any of the warranties and representations made by the Guarantors in Section 5.6 of the Second Modification were false in any material respect when made and/or (B) (2) the Guarantors are then in default of any of the covenants made by the Guarantors under Section 5.7 of the Second Modification. For the purposes of this Guaranty, an affiliate shall mean with respect to any specified person, any other person controlling or controlled by or under common control with such specified person. For the purposes of this definition, "control" when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

13. In the event: (A) of the occurrence of any such Voluntary Bankruptcy, and if (B) (1) any of the warranties and representations made by the Guarantors in Section 5.6 of the Second Modification were false in any material respect when made and/or (B) (2) the Guarantors are then in default of any of the covenants made by the Guarantors under Section 5.7 of the Second Modification and as a result of such Voluntary Bankruptcy, Lender is prohibited from, or is delayed in, enforcing any of its rights and remedies afforded



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to it under the Note, the Mortgage, the Second Modification or the other Loan Documents arising as a secured creditor, pursuant to an automatic stay imposed by Section 362 of the Bankruptcy Code, or pursuant to a stay arising under any other present or future federal or state act or law relating to bankruptcy, insolvency or relief for debtors, the Guarantors do hereby absolutely and unconditionally, jointly and severally, covenant and agree to pay to Lender upon demand, in addition to and not in lieu of payment of the Guaranteed Obligation, a per diem amount, as liquidated damages and not as a penalty, of Two Thousand Dollars (\$2,000.00) for each day which occurs between the date on which such stay becomes effective and the date on which Lender is granted relief from such stay whether under Section 362 of the Bankruptcy Code or under any other present or future federal or state act or law relating to bankruptcy, insolvency or relief for debtors. The parties hereto agree that the damages caused by such stay are and will be difficult to determine and that the within per diem amount is a reasonable amount to be assessed as such liquidated damages.

IN WITNESS WHEREOF, the Guarantors have caused this Guaranty/Indemnification Agreement to be executed and delivered to Lender on the date first above written.

In the presence of:

First Dearborn Properties, Inc.  
an Illinois corporation

Print: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Print: \_\_\_\_\_  
\_\_\_\_\_

Print: \_\_\_\_\_  
\_\_\_\_\_

Robert S. Ross  
as an individual

Print: \_\_\_\_\_  
\_\_\_\_\_

Bruce H. Block,  
as an individual

saw:180590.9A:lar 8/28/98

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2025-01-15 10:00 AM

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EXHIBIT C

THE ABOVE SPACE FOR RECORDER'S USE ONLY

This Indenture, made this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_ between LaSalle National Trust, N.A., a national banking association, Chicago, Illinois, as Trustee under the provisions of a Deed or Deeds in Trust, duly recorded and delivered to said Bank in pursuance of a trust agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and known as Trust Number \_\_\_\_\_ (the "Trustee"), \_\_\_\_\_ and \_\_\_\_\_ (the "Grantee(s))

(Address of Grantee(s)) \_\_\_\_\_

Witnesseth, that the Trustee, in consideration of the sum of Ten Dollars and no/100 (\$10.00) and other good and valuable considerations in hand paid, does hereby grant, sell and convey unto the Grantee(s), the following described real estate, situated in \_\_\_\_\_ County, Illinois, to wit:

Property Address \_\_\_\_\_  
 Permanent Index Number \_\_\_\_\_  
 together with the tenements and appurtenances thereunto belonging

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11/15/2011 10:00 AM

To Have And To Hold the same unto the Grantee(s) as aforesaid and to the proper use, benefit and behoof of the Grantee(s) forever

This Deed is executed pursuant to and in the exercise of the power and authority granted to and vested in said Trustee by the terms of said Deed or Deeds in Trust delivered to said Trustee in pursuance of the trust agreement above mentioned. This Deed is made subject to the lien of every Trust Deed or Mortgage (if any there be) of record in said county affecting the said real estate or any part thereof given to secure the payment of money and remaining unreleased at the date of the delivery hereof.

In Witness Whereof, the Trustee has caused its corporate seal to be hereto affixed, and has caused its name to be signed to these presents by its Assistant Vice President and attested by its Assistant Secretary, the day and year first above written.

Attest:

**LaSalle National Trust, N.A.**  
as Trustee as aforesaid,

Assistant Secretary

By \_\_\_\_\_  
Assistant Vice President

This instrument was prepared by _____	<b>LaSalle National Trust, N.A.</b> Real Estate Trust Department 135 South LaSalle Street Chicago, Illinois 60603-4192
---------------------------------------	---------------------------------------------------------------------------------------------------------------------------------

State of Illinois }  
County of Cook } SS:

I, \_\_\_\_\_ a Notary Public in and for said County,

in the State aforesaid, Do Hereby Certify that \_\_\_\_\_

Assistant Vice President of LaSalle National Trust, N.A., and \_\_\_\_\_

Assistant Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said Trustee, for the uses and purposes therein set forth; and said Assistant Secretary did sign then and there acknowledge that he as custodian of the corporate seal of said Trustee did affix said corporate seal of said Trustee to said instrument as his own free and voluntary act, and as the free and voluntary act of said Trustee for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_

Notary Public

Blank No. \_\_\_\_\_

**TRUSTEE'S DEED**

Address of Property \_\_\_\_\_

**LaSalle National Trust, N.A.**

Trustee  
To

**LaSalle National Trust, N.A.**  
135 South LaSalle Street  
Chicago, Illinois 60603-4192

967255664

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UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT D

### ASSIGNMENT

Chicago, Illinois

Date \_\_\_\_\_

For Value Received I/We hereby sell, assign, transfer and set over unto \_\_\_\_\_

all my/our rights, titles, powers, privileges and beneficial interest, in and to \_\_\_\_\_

(sk. one-half, etc.)

(100, 50, etc.)

of the entire beneficial interest in, to and under that certain Trust Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_

A D 19\_\_\_\_ and known as LaSalle National Trust, N.A. Trust Number \_\_\_\_\_

_____	(SS #	)
_____	(SS #	)
_____	(SS #	)
_____	(SS #	)

Witness:

\_\_\_\_\_  
\_\_\_\_\_

### ACCEPTANCE

I/We accept the foregoing assignment subject to all of the provisions of said Trust Agreement:

_____	(SS #	)	Address _____
_____	(SS #	)	Address _____
_____	(SS #	)	Address _____
_____	(SS #	)	Address _____
_____	(SS #	)	Address _____
_____	(SS #	)	Address _____

Received a duplicate of the foregoing assignment and acceptance  
Dated at Chicago, Illinois.

this \_\_\_\_\_ day of \_\_\_\_\_ A D 19\_\_\_\_

LaSalle National Trust, N.A.

By \_\_\_\_\_  
Authorized Signature

(Note: This assignment should be executed in duplicate by both assignor and assignee and one executed copy lodged with LaSalle National Trust, N.A. The Bank assumes no responsibility for the validity or sufficiency of the foregoing assignment or acceptance.)

96725664