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1998-09-30 11:34:01

Cook County Recorder 49.50

THE ABOVE SPACE FOR RECORDER'S USE ONLY

THIRD MODIFICATION AND EXTENSION OF PROMISSORY NOTE
AND MORTGAGE AND SECURITY AGREEMENT

Property of Cook County Clerk's Office

Property Address: 1700 Sherman, Evanston, IL

Permanent Index Number: 11-18-126-013-0000

together with the tenements and appurtenances thereunto belonging.

Filed by, and after recording return to, Patzik, Frank & Samotny, Ltd., 150 S. Wacker,
FORM NO:096-8028A AUG 95 Ste. 900, Chicago, Illinois 60606

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THIRD MODIFICATION AND EXTENSION OF PROMISSORY NOTE
AND MORTGAGE AND SECURITY AGREEMENT

LASALLE NATIONAL BANK, Successor Trustee To

This Third Modification and Extension of Promissory Note and Mortgage and Security Agreement (this "Third Modification") is made effective as of August 1, 1998 by and between LA SALLE NATIONAL TRUST N.A. (fka La Salle National Bank), as Trustee under Trust Agreement, dated November 13, 1985, and known as Trust No. 106506, and not personally ("Borrower"); AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY ("Lender"); EVANSTON GALLERIA LIMITED PARTNERSHIP, an Illinois limited partnership, (the "Evanston Galleria" and/or "Beneficiary"); 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").

A. Borrower borrowed from Lender the sum of EIGHT MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$8,250,000.00), said loan (the "Loan") being represented by and subject to the terms and conditions in that certain Promissory Note dated April 5, 1989, executed by Borrower in favor of Lender (the "Note"), and being secured by, among other things (i) that certain Mortgage and Security Agreement (the "Mortgage"), of even date with the Note, between Borrower, 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 incorporated herein for all purposes; and (ii) certain other documents securing or evidencing the Loan (the "Other Loan Documents" as more fully described on Schedule A attached hereto and incorporated herein). The Deed of Trust and Other Loan Documents are referred to herein as the "Loan Documents".

B. On February 23, 1993 (but effective as of August 1, 1992), Borrower, Evanston Galleria and 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 and which was recorded March 2, 1993 as Document No. 93153912 in the Office of the Recorder of Deeds of Cook County, Illinois.

C. On September 12, 1996 (but effective as of May 1, 1996), Borrower, Lender, Evanston Galleria, First Dearborn Properties, Inc., Robert S. Ross and Bruce H. Block entered into that Certain Second Modification Agreement (the "Second Modification") which amongst other matters, extended the Maturity Date of the Loan until May 1, 1998 and modified the interest rate payable upon the indebtedness and which was recorded 9/23/96 as Document No. 96-11564 in the Office of the Recorder of Deeds of Cook County, Illinois.

D. On May 5, 1998 (but effective May 1, 1998), Borrower, Lender and Evanston Galleria entered into that certain Ninety (90) Day Extension Agreement (90-day Extension),

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which amongst other matters, extended the Maturity Date of the Loan Documents by ninety (90) days.

E. Pursuant to the 90-day Extension, the Loan matures on August 1, 1998 and Borrower and Beneficiary have requested that Lender extend the maturity date to August 1, 1999.

F. Lender has agreed to extend the maturity date of the Note, subject to and on the terms and conditions of this Third Modification.

NOW, THEREFORE, for adequate consideration given and received, Borrower, Evanston Galleria, the Controlling Parties and Lender hereby agree that the Loan Documents are modified as follows, effective as of the first day of August, 1998 (defined terms used herein shall have the same meaning as defined in the Loan Documents, except as expressly modified herein):

1. The outstanding principal balance under the Note after the payment due on August 1, 1998 is Eight Million Three Hundred Eleven Thousand Seven Hundred Forty and 24/100 Dollars (\$8,311,740.24). Borrower shall continue making monthly payments on the first day of each month in accordance with the Second Modification. No additional funds are to be disbursed to Borrower pursuant to this Third Modification.

2. The entire outstanding principal balance and all unpaid interest and other charges due under the Loan Documents as modified by the First, Second and Third Modifications thereof, shall become due and payable on August 1, 1999.

3. The terms, conditions and provisions of the Second Modification are incorporated herein by reference and made a part hereof and such Second Modification and all documents and instruments executed in connection therewith shall continue in full force and effect without modification or amendment except for the extension of the maturity date as provided in Paragraph 2 hereof.

4. This Third Modification shall be deemed to be a Loan Document and a default by Borrower or Evanston Galleria under this Third Modification shall be deemed to be an Event of Default simultaneously under the Note, the Mortgage and the other Loan Documents.

5. In order to induce Lender to enter into this Third Modification, Borrower, Evanston Galleria and the Controlling Parties hereby represent and warrant that:

- (a) the execution and delivery of this Third Modification and the performance of Borrower hereunder and under any of the Loan Documents as amended hereby (i) does not violate any provisions of law; and (ii) will not result in the breach of, or constitute a default or require a consent under, any indenture or other agreement or instrument to which Borrower or Evanston

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Galleria is a party or by which Borrower or Evanston Galleria may be bound or affected;

- (b) this Third Modification and the Loan Documents as amended hereby constitute legal, valid and binding obligations of Borrower, Evanston Galleria and the Controlling Parties, enforceable against Borrower, Evanston Galleria and the Controlling Parties in accordance with their terms;
- (c) the representations and warranties of Borrower, Evanston Galleria and the Controlling Parties in the Loan Documents as modified by the First and Second Modifications are true and correct as of the date of this Third Modification as if they were made on this date;
- (d) no Event of Default or event which with notice or lapse of time, or both, would constitute an Event of Default under the Loan Documents, the First Modification or the Second Modification, has occurred and is continuing on the date of this Third Modification;
- (e) Borrower shall immediately reimburse Lender for all costs incurred in connection with this Third Modification;
- (f) This Third Modification shall be effective only if (i) the herein conditions are satisfied, (ii) this Third Modification shall have been executed and delivered by Borrower on or before August 15, 1998 (the "Expiration Date") and, (iii) the Borrower executes any additional documents required by Lender or Lender's counsel;
- (g) In the event this Third Modification has not been executed and delivered by Borrower to Lender by the Expiration Date, or upon the date of such delivery there exists any default in Borrower's obligations set forth herein, or if the Borrower defaults under any existing obligations under the Loan Documents, Lender shall have the right to exercise all of its rights and remedies set forth in the Loan Documents, including, without limitation, to proceed with foreclosure against Borrower and the security property; and
- (h) Borrower hereby fully and forever releases, discharges and acquits Lender, American General Realty Advisors, Inc. and each of its respective parents, subsidiaries, affiliates and predecessor corporations, and their respective past and present officers, directors, shareholders, attorneys, legal representatives, agents and employees, and their successors, heirs and assigns and each of them, of and from and against any and all claims,

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demands, obligations, duties, liabilities or any type, kind or nature which Borrower may now have, heretofore have had, or have in the future.

7. Miscellaneous.

- (a) This Third Modification, with the Loan Documents, constitutes the entire agreement between the Lender and its employees, agents, officers, directors, successors and assigns and Borrower, Evanston Galleria, the Controlling Parties and supersedes all prior or contemporaneous understandings, or representations or agreements between the parties concerning the extension herein granted. No oral statement not specifically incorporated into this Third Modification shall be of any force and effect;
- (b) This Third Modification shall inure to the benefit of, and be binding upon the parties to this Third Modification and their respective heirs, successors and assigns;
- (c) Each party executing this Third Modification represents that such party has the legal power and authority to do so.
- (d) This Third Modification may be executed in any number of counterparts, each of which shall be deemed an original hereof, and all such counterparts shall constitute but one and the same instrument.
- (e) When the identity of the parties hereto or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- (f) This Third Modification shall be governed by and construed and interpreted in accordance with the laws of the State of Texas.
- (g) This Third Modification shall be null and void and of no legal consequence whatsoever unless and only if the reaffirmations of guarantees are executed as herein provided simultaneously with the execution of this Third Modification by Evanston Galleria.

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IN WITNESS WHEREOF, the parties have executed this Third Modification this 17 day of August, 1998.

WITNESSED BY:

BORROWER:

LA SALLE NATIONAL TRUST N.A. (FKA LASALLE NATIONAL BANK), AS TRUSTEE UNDER TRUST AGREEMENT, DATED NOVEMBER 13, 1985, AND KNOWN AS TRUST NO. 106506, AND NOT PERSONALLY

[Signature]

By: [Signature]

Print: _____

Name: ROSEMARY COLLINS

Title: [Signature]

LENDER:

AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY

[Signature]

By: [Signature]

Print: JAMES G. WOOD

Name: Rambert R. Owen, Jr.

Title: Real Estate Investment Officer

EVANSTON GALLERY LIMITED PARTNERSHIP, an Illinois limited partnership, by its undersigned sole general partner

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

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

Print: Faren Burris

By: [Signature]
Name: ROBERT L. COLL
Title: VICE PRESIDENT

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COOK COUNTY CLERK'S OFFICE
100 N. LAUREL ST. CHICAGO, IL 60602

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FIRST DEARBORN PROPERTIES, INC., an Illinois corporation

Karen Burris

Print: Karen Burris

By: [Signature]

Name: Robert S. Ross

Title: Vice President

as a Controlling Party

[Signature]
ROBERT S. ROSS, as a Controlling Party

[Signature]
BRUCE H. BLOCK, as a Controlling Party

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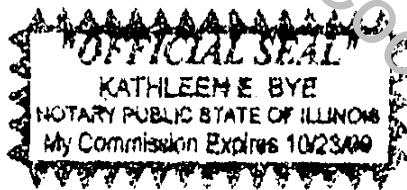
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NOTARY ACKNOWLEDGMENTS

STATE OF ILLINOIS)
)
CITY OF COOK)

On the 3 day of ^{Sep} ~~August~~, 1998, before me, a Notary Public for aforesaid City and State, personally appeared LA SALLE NATIONAL TRUST N.A. (FKA LA SALLE NATIONAL BANK), AS TRUSTEE UNDER TRUST AGREEMENT, DATED NOVEMBER 13, 1985, AND KNOWN AS TRUST NO. 106506, AND NOT PERSONALLY, by ROSEMARY COLLINS, its ~~TRUSTEE~~ ^{MANAGING OFFICER} who acknowledged that he/she did sign on behalf of said trust and that the same is his/her free act and deed individually and as such officer.

WITNESS my hand and official seal.

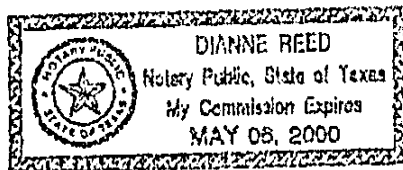


Kathleen E. Bye
Notary Public
My Commission expires on: 10/23/99

STATE OF TEXAS)
)
CITY OF Harris)

On the 26th day of August, 1998, before me, a Notary Public for aforesaid City and State, personally appeared AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY, an Tennessee corporation, by Rembert P. Owen, Jr. its ^{Real Estate} ~~Investment~~ ^{officer} who acknowledged that he/she did sign on behalf of said corporation and that the same is his/her free act and deed individually and as such officer.

WITNESS my hand and official seal.



Dianne Reed
Notary Public
My Commission expires on: _____

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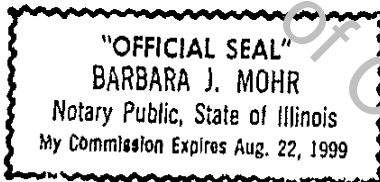
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STATE OF ILLINOIS)
COUNTY OF COOK Lake)

On the 17 day of August, 1998, a Notary Public, for aforesaid County and State, DO HEREBY CERTIFY THAT ROBERT S. ROSS, 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, personally known to me to be the same person whose name are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act, and as the free and voluntary act of said entity.

WITNESS my hand and official seal.



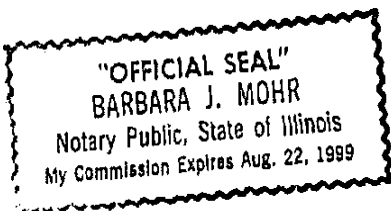
Barbara Mohr
Notary Public

My Commission expires on: _____

STATE OF ILLINOIS)
COUNTY OF COOK Lake)

On the 17 day of August, 1998 a Notary Public for aforesaid County and State, DO HEREBY CERTIFY THAT Bruce H. Block, as Controlling party, of FIRST DEARBORN PROPERTIES, INC., an Illinois corporation, personally known to me to be the same person whose name are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act, and as the free and voluntary act of said entity.

WITNESS my hand and official seal.



Barbara Mohr
Notary Public

My Commission expires on: _____

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STATE OF ILLINOIS)
CITY OF COOK *Lake*)

On the 17 day of August, 1998, before me, a Notary Public for aforesaid City and State, personally appeared ROBERT S. ROSS, as a Controlling Party, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed individually and as such party.

WITNESS my hand and official seal.



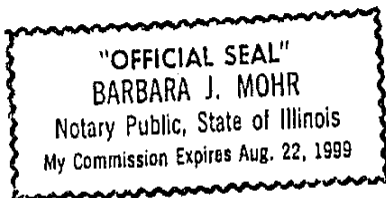
Barbara J Mohr
Notary Public

My Commission expires on: _____

STATE OF ILLINOIS)
CITY OF COOK *Lake*)

On the 17 day of August, 1998, before me, a Notary Public for aforesaid City and State, personally appeared BRUCE H. BLOCK, as a Controlling Party, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed individually and as such party.

WITNESS my hand and official seal.



Barbara J Mohr
Notary Public

My Commission expires on: _____

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This instrument is executed by the undersigned to attest their consent to this Third Modification and to reaffirm the continued existence in full force and effect of that certain "Evanston Guaranty" as referenced to in Section 1.3 of the Second Modification and that certain Guaranty/Indemnification Agreement dated Sept 1, 1996 by the Controlling Parties.

FIRST DEARBORN PROPERTIES, INC., an Illinois corporation

Karen Bucio
Print: Karen Bucio

By: [Signature]
Name: Robert S. Ross
Title: Vice President

[Signature]
ROBERT S. ROSS, as an Individual

[Signature]
BRUCE H. FLOCK, as an Individual

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SCHEDULE A OTHER LOAN DOCUMENTS

(a) Assignment of Lessor's Interest in Leases 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;

(b) Assignment of Lessor's Interest in leases dated April 5, 1989, executed by Borrower, 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;

(c) Collateral Assignment of Beneficial Interest Under Land Trust dated April 5, 1989, executed by Evanston Galleria and acknowledged and accepted by Lender and Borrower;

(d) UCC 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;

(e) Beneficiary's Guaranty, dated April 5, 1989, for the benefit of the Lender, executed by Evanston Galleria, as modified by the First Modification; and

(f) Debt Service Guaranty dated April 5, 1989 for the benefit of the Lender, executed by Guarantors, as modified by the First Modification.

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EXHIBIT "A"

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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 23187121 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, 220 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:

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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"
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"This conveyance is made subject to that certain promissory note in the original principal sum of \$8,250,000 dated April 5, 1989 from Grantor to American General Life and Accident Insurance Company ('AGI') and that certain Mortgage and Security Agreement of even date therewith recorded in the Office of the Recorder of Deeds of Cook County, Illinois as Document No. 89154856, the Assignment of Lessor's Interest in Leases executed by Evanston Galleria Limited Partnership recorded as Document No, 89154857, the Assignment of Lessor's Interest in Leases by Grantor as Document No. 89154858, the Collateral Assignment of Beneficial Interest under Land Trust executed by Evanston Galleria dated April 5, 1989 to AGI, and any UCC financing statements executed by Grantor and/or Evanston Galleria Limited Partnership in connection therewith (as any of the aforesaid may have been modified or amended by First Modification Agreement dated February 23, 1993 and/or by the Second Modification Agreement dated of even date herewith.

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