

UNOFFICIAL COPY

99634395

6078/0056 04 001 Page 1 of 17  
1999-07-01 09:57:50  
Cook County Recorder 53.00

THIS INSTRUMENT PREPARED BY  
AND WHEN RECORDED, RETURN  
TO:

Kevin A. Sullivan, Esq.  
Winstead Sechrest & Minick P.C.  
5400 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270



99634395

7797204 DI J.Y 5085-

Loan No. 240979

CONSENT AND AGREEMENT

The undersigned (the "Undersigned") acknowledges an assignment of certain documents pursuant to that certain Mortgage, Security Agreement and Fixture Financing Statement (the "Security Instrument") to be executed and delivered by **RENAISSANCE NORTHWEST HIGHWAY LLC**, an Illinois limited liability company ("Borrower"), to **COLUMN FINANCIAL, INC.**, a Delaware corporation ("Lender"), in connection with that certain loan (the "Loan") of ELEVEN MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$11,200,000.00) being made by Lender to Borrower to finance certain real property and improvements located in Cook County, Illinois and more particularly described on Exhibit A attached hereto and incorporated herein by reference, said real property and improvements being hereinafter referred to as the "Premises." The Undersigned has agreed to perform or supply certain services in connection with the management of the Premises pursuant to that certain Management Agreement dated as of June 23, 1999 (the "Contract") attached hereto as Exhibit B and incorporated herein by reference for all purposes. The Undersigned does hereby (a) warrant and represent that the Contract contains all agreements between the Undersigned and Borrower relating to the Premises; and (b) acknowledge and consent to the assignment of the Contract as set forth in the Security Instrument and to any further assignment thereof by Lender; and (c) warrant and represent that no default exists under the terms of the Contract between Borrower and the Undersigned; and (d) acknowledge that Borrower has satisfied all conditions precedent to commencement of performance by the Undersigned under the Contract. The Undersigned does hereby agree that: (i) in the event of any default by Borrower under the terms of the "Loan Documents" (as defined in the Security Instrument), the Undersigned shall, upon receipt of written notice and demand of Lender, continue performance under the Contract on behalf of Lender, provided that the Undersigned is reimbursed for such performance rendered thereafter on behalf of Lender in accordance with the Contract; and (ii) in the event of any default by Borrower under the Contract, the Undersigned shall deliver to Lender, by certified United States mail, postage prepaid, return receipt requested, addressed to **COLUMN FINANCIAL, INC.**, c/o 3414 Peachtree Road, Suite 1140, Atlanta, Georgia 30326-1113, written notice of such default and

1780

**BOX 333-CT1**

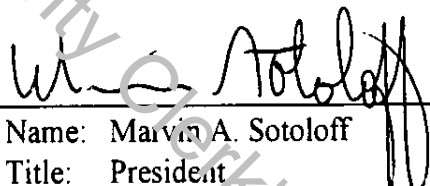
the action required to cure the same, and Lender shall have a reasonable time (but in no event less than thirty days after receipt of such notice) within which Lender shall have the right, but not the obligation, to cure such default, and the delivery of such notice of default and the failure of Lender to cure the same within such time allowed shall be conditions precedent to the exercise of any right or remedy of the Undersigned arising by reason of such default; and (iii) the Undersigned shall not enter into any modification of, or addition to, the Contract without the prior written consent of Lender; and (iv) in the event that Lender shall acquire title to the Premises by foreclosure or otherwise, the Contract shall be terminable at the option of Lender; and (v) the rights of the Undersigned under the Contract shall be and remain subordinate in all respects to the Loan Documents.

The Undersigned represents that it is looking to Borrower, and not to Lender, for payment under the Contract, except as provided in clause (i) of the preceding paragraph and the Undersigned waives any equitable lien which the Undersigned may now or hereafter have upon the proceeds of the Loan.

This Consent and Agreement is given by the Undersigned for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Undersigned, and is intended to induce Lender to make the Loan to Borrower.

IN WITNESS WHEREOF, the Undersigned has executed this instrument to be effective as of June 24, 1999.

**SE REALTY PARTNERS LTD.,**  
an Illinois corporation

By:   
Name: Marvin A. Sotoloff  
Title: President

# UNOFFICIAL COPY

99634395

STATE OF ILLINOIS     )  
  )  
  )     ss.  
COUNTY OF COOK     )

I, Patricia A. Oliosi, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Marvin A. Sotoloff, personally known to me to be the President of SP Realty Partners Ltd., an Illinois corporation, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and deed and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2<sup>nd</sup> day of June, 1999.



Pat A. Oliosi

Notary Public

My Commission Expires:

3/25/01

## EXHIBIT LIST

- Exhibit A - Legal Description
- Exhibit B - Management Agreement

::ODMA\PCDOCS\DALLAS\_1\3163136\3  
June 17, 1999  
171:3011-454

# UNOFFICIAL COPY

## EXHIBIT A

99634395

### Parcel 1

Lot 1 in Williamsburg Office Complex, a Subdivision being a part of the Southeast Quarter of the Northeast Quarter of Section 21 and part of the Southwest Quarter of the Northwest Quarter of Section 22, both in Township 41 North, Range 12 East of the Third Principal Meridian, located in the City of Park Ridge, Cook County, Illinois, according to the Plat thereof recorded on August 12, 1975 as Document Number 23185011, in Cook County, Illinois.

Street Address: 1550 N. Northwest Highway  
Tax Identification Numbers: 09-21-206-013-0000  
09-21-206-014-0000

### Parcel 2

Lots 1 and 2 in Renaissance II, a Resubdivision of Lot 2 in Williamsburg Office Complex, a Subdivision being a part of the Southeast Quarter of the Northeast Quarter of Section 21 and part of the Southwest Quarter of the Northwest Quarter of Section 22, both in Township 41 North, Range 12 East of the Third Principal Meridian, located in the City of Park Ridge, Cook County, Illinois, according to the Plat thereof recorded on March 17, 1976 as Document Number 23419684, in Cook County, Illinois.

Street Address: 1460 and 1480 Renaissance Drive  
Tax Identification Numbers: 09-21-206-016-0000  
09-21-206-017-0000  
09-21-206-018-0000  
09-22-110-005-0000

### Parcel 3

All right, title and interest in and to those certain non-exclusive ingress, egress, parking and surface and sub-surface drainage easements created pursuant to Declaration and Grant of Easements filed for record on March 31, 1986 as Document Number 86121687 over and across the property described therein, more particularly described as follows:

Lots 4 and 5 in Renaissance II, a Resubdivision of Lot 2 in Williamsburg Office Complex, a Subdivision being a part of the Southeast Quarter of the Northeast Quarter of Section 21 and part of the Southwest Quarter of the Northwest Quarter of Section 22, both in Township 41 North, Range 12 East of the Third Principal Meridian, located in the City of Park Ridge, Cook County, Illinois, according to the Plat thereof recorded on March 17, 1976 as Document Number 23419684, in Cook County, Illinois.

Lot 1 in William L. Kunkle and Company's resubdivision of certain lots and parts of lots in Block 3, and all of the vacated alley in said Block; together with part of the South 1/2 of vacated Ashland Avenue, and part of vacated Farrell Avenue, all being in Farrell Park, being a subdivision of Lot 8 in Garland Estates Division of Lands in Section 16 and Section 21, Township 41 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

#### Parcel 4

All right, title and interest in and to those certain non-exclusive ingress, egress, parking and utility easements created pursuant to Declaration of Covenants, Conditions, Restrictions and Easements filed on January 4, 1980 as Document Number 25306315 over and across the property described therein, more particularly described as follows:

Lots 3, 4 and 5 in Renaissance II, a Resubdivision of Lot 2 in Williamsburg Office Complex, a Subdivision being a part of the Southeast Quarter of the Northeast Quarter of Section 21 and part of the Southwest Quarter of the Northwest Quarter of Section 22, both in Township 41 North, Range 12 East of the Third Principal Meridian, located in the City of Park Ridge, Cook County, Illinois, according to the Plat thereof recorded on March 17, 1976 as Document Number 23419684, in Cook County, Illinois.

::ODMA\PCDOCS\DALLAS\_1\3174144\2  
June 23, 1999  
409:3011-454

## MANAGEMENT AGREEMENT

THIS AGREEMENT made as of the 23rd day of June, 1999 between Renaissance Northwest Highway LLC (hereinafter referred to as the "Owner"), and SP Realty Partners Ltd. (hereinafter referred to as the "Managing Agent");

### WITNESSETH:

WHEREAS, the Owner owns the real property located at 1460 and 1480 Renaissance Drive and 1550 N. Northwest Highway, Park Ridge, Illinois and all personal property used in the operation thereof (hereinafter collectively referred to as the "Premises");

WHEREAS, Managing Agent is experienced in the operation, maintenance and management of commercial office buildings; and

WHEREAS, Owner desires to retain the managing agent for the operation, maintenance, management, leasing and releasing of the Premises and Managing Agent desires to perform such service.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I

#### APPOINTMENT AND AUTHORITY OF THE AGENT

1.1 The Owner hereby appoints the Managing Agent as the managing agent for the Premises for the period commencing on June 23, 1999 and terminating on June 30, 2000 or such earlier date as herein provided, and hereby authorizes the Managing Agent, subject to the approval rights of Owner, to exercise such powers with respect to the Premises as may be necessary for the performance of the Managing Agent's obligations set forth herein and the Managing Agent accepts such appointment on the terms and conditions hereinafter set forth.

### ARTICLE II

#### THE AGENT'S AGREEMENTS

2.1 The Managing Agent agrees to use its best efforts in the management and operation of the Premises, and to comply with all Owner's instructions relating thereto. In connection therewith, Managing Agent agrees that it shall perform or cause to be performed all work in connection with the management, including maintenance, of the Premises and will devote so much of its time, efforts, employees and resources as may be reasonably required for the successful and profitable operation of the Premises. Managing Agent accepts the relationship of

trust and confidence established between it and the Owner by this Agreement and covenants with the Owner to furnish its best skill and judgment in furthering the interests of the Owner. Managing Agent shall, in furtherance of the foregoing perform the following services:

(a) To negotiate and, when approved by the Owner, enter into contracts in the name of the Owner. The Managing Agent shall be deemed to have the approval of Owner to enter into contracts if the amounts therefor are included within the Annual Budget hereafter defined for terms no longer than one (1) year for services such as electricity, gas, fuel, water, telephone, window cleaning, ash or rubbish hauling and such other utility and maintenance services for the Premises as the Managing Agent shall deem advisable.

(b) To select, employ, pay, supervise, direct and discharge all employees for the operation and maintenance of the Premises, in number and at wages for any year not in excess of those shown in the Annual Budget for such year, to carry Worker's Compensation Insurance (and, when required by law, Compulsory Non-Occupational Disability Insurance) covering such employees, and to use its best business judgment in the selection of such employees. All persons employed in connection with the operation and maintenance of the Premises shall be employees of the Managing Agent and the personnel cost of all on-site personnel including managers and secretaries, provided the same were included in the Annual Budget, shall be reimbursed by Owner to Managing Agent.

(c) To keep the Premises in a clean and sightly condition and to recommend and make all repairs and changes, do all decorating, and purchase all supplies, necessary for the property operation of the Premises or the fulfillment of the Owner's obligations under any lease or the compliance with all governmental requirements, provided that the Managing Agent shall not make any purchase or do any work, the cost of which shall exceed the amount set forth in the Annual Budget without, in each instance, obtaining the prior approval of the Owner, except in circumstances which the Managing Agent shall, in its best business judgment, deem to constitute an emergency requiring immediate action for the protection of the Premises or of tenants or other persons or to avoid the suspension of necessary services in which event Managing Agent shall be deemed to have Owner's approval to take such immediate action. The Managing Agent shall notify the Owner as soon as reasonably practicable of the necessity for, the nature of, and the cost of, any such emergency and non-emergency repairs or compliance whether or not the costs of same are included in the Annual Budget. At Owner's request, Managing Agent shall submit a list of contractors and subcontractors, performing tenant work, repairs, alterations or services at the Premises, under Managing Agent's direction.

(d) To handle complaints and requests from tenants, to notify the Owner of any major complaint made by a tenant and to notify the Owner promptly (which notice shall be accompanied by copies of supporting documentation), of: any notice of violation of any governmental requirements received by Managing Agent; any

defect in the Premises known to Managing Agent; any fire or other casualty causing damage to the Premises, and, in the case of any serious fire or other casualty causing serious damage to the Premises, to also immediately telephone notice thereof to Owner's designated casualty insurance carrier, so that an insurance adjuster can view the damage before repairs are started and complete customary loss reports in connection with fire or other damage to the Premises;

(e) To notify the Owner's General Liability Insurance carrier and the Owner of any personal injury or property damage occurring to or claimed by any tenant or third party on or with respect to the Premises promptly upon obtaining knowledge thereof and to promptly forward to the carrier, with copies to the Owner, any summons, subpoena, or other like legal document served upon the Managing Agent relating to actual or alleged potential liability of the Owner, the Managing Agent, or the Premises, with copies to the Owner of all such documents.

(f) To receive and collect rent and all other monies payable to the Owner by all tenants and licensees in the Premises pursuant to procedures established by Owner and, unless directed otherwise by Owner, to deposit the same promptly in such bank account(s) as Owner may from time to time designate to Managing Agent.

(g) At the expense of, but only upon the prior approval of, the Owner, to institute all necessary legal action or proceedings for the collection of rent or other income from the Premises, or for the ousting or dispossession of tenants or other persons therefrom, and for all other matters requiring legal attention. The Managing Agent shall employ only such counsel designated by Owner with the understanding that the Owner reserves the right to control litigation of any character affecting or arising out of the operation of the Premises. The Managing Agent shall have the authority, without Owner's prior written approval except as hereinafter provided, to enforce all leases, including, without limitation, the sending of default notices, provided that the Managing Agent shall obtain the approval of the Owner prior to instituting any legal action, and prior to terminating any lease for delinquency that required the Owner's initial approval and report to the Owner, not less often than quarterly, any lease delinquency. The Managing Agent shall submit to the Owner promptly upon receipt any notice of landlord default received from any tenant. In no event shall the Managing Agent collect more than one month's rent in advance unless approved by the Owner.

(h) At the expense of the Managing Agent, to bond the Managing Agent and/or all of the Managing Agent's employees who may handle or be responsible for monies or property of the Owner.

(i) To notify the Owner immediately of (i) any fire, flood or other casualty or lawsuit involving the Premises of which Managing Agent has knowledge through its operation of the Premises and (ii) violations relative to the leasing, use, repair and maintenance of the Premises under governmental laws, rules, regulations, ordinances,



# UNOFFICIAL COPY

99634395

or like provisions of which Managing Agent has knowledge through its operation of the Premises. The Managing Agent will not bear responsibility for non-compliance unless such non-compliance is due to the negligence or willful misconduct of the Managing Agent or its employees.

(j) To take all action required to cause the Owner to comply with all obligations under all contracts, leases, notes, mortgages and other documents and instruments relating to the Premises which are known to Managing Agent.

(k) To monitor, review and keep Owner advised with respect to real estate tax assessments relating to the Premises and to assist the Owner, when so requested, to try to reduce such taxes.

(l) To set up and maintain reserves required by the Annual Budget and to pay prior to delinquency, out of Owner's funds, all debt service, insurance premiums, real estate taxes and assessments and other obligations of Owner which were properly incurred in accordance with this Agreement.

(m) To generally represent the interest of the Owner with respect to all public bodies, such as taxing authority, police, fire, county and township public authorities, by notifying Owner of all matters which come before Managing Agent which would impact the Premises and, at the direction of Owner or together with counsel for Owner, to attend meetings and/or generally deal with such governmental entities.

2.2 The Managing Agent agrees to keep the Owner fully informed at all times with respect to its activities and with respect thereto shall render monthly reports for the preceding calendar month, on or before the fifteenth (15th) day of each month, in form satisfactory to the Owner, and to pay Managing Agent's fees hereunder and to remit to the Owner the net receipts from the Premises (to the extent the same are not required to maintain the reserves approved by Owner herein provided for) with such monthly reports. The Managing Agent agrees that the Owner shall have the right to require the transfer to the Owner at any time of any funds in bank accounts which are established pursuant to this Agreement considered by the Owner in its sole discretion to be in excess of an amount reasonably required by the Managing Agent for disbursement purposes (including the maintenance of reserves) in connection with the Premises.

2.3 The Managing Agent agrees to keep proper records with respect to the management and operation of the Premises, and to retain those records for periods specified by the Owner. The Owner shall have the right to inspect such records and audit the reports required to be kept by Managing Agent during business hours for the term of this Agreement and for a period of three (3) years thereafter.

The Managing Agent shall ensure such control over accounting and financial transactions as is reasonably required to protect the Owner's assets from loss or diminution due

to error, negligence or fraudulent activity on the part of the Managing Agent's associates or employees. Losses caused by the gross negligence or fraudulent activity of Managing Agent or its employees or agents shall be borne by the Managing Agent.

2.4 Within sixty (60) days of the date hereof and on each November 15 during the term hereof, Managing Agent shall prepare and submit in writing to the Owner for its consideration and approval an annual budget and operating plan for the remainder of the current calendar year and for each succeeding calendar year. Such budget and plan shall contain projections of income, expenses and capital expenditures of the Premises and such other information as Owner may request. The Owner shall review the proposed budget and plan and Managing Agent shall make such modifications thereto as Owner requests. Such budget and plan for a year or partial year as herein provided, as approved by Owner, is herein referred to as the "Annual Budget" for such year. The Managing Agent shall implement the Annual Budget and shall be authorized, without the need for further approval by the Owner, to make the expenditures and incur the obligations provided for in the Annual Budget. Any provision hereof to the contrary notwithstanding, except for expenditures made and obligations incurred which were provided for in the Annual Budget or which were otherwise approved by Owner in advance or which pursuant to any other provision hereof are not so required to be approved, the Managing Agent shall not have any authority to make any expenditure or incur any obligation on behalf of the Owner and Managing Agent shall protect, defend, indemnify and hold harmless the Owner and the Premises from and against any and all expenditures and obligations made or incurred or acts taken outside the scope of its authority as herein provided.

2.5 At the same time as the Managing Agent submits to the Owner the proposed Annual Budget pursuant to Section 2.4 hereof, the Managing Agent shall submit to the Owner, for the Owner's review and approval, a leasing plan (which plan shall be a projection only) which shall include a statement of the space the Managing Agent expects to be leased during the ensuing year, the minimum rent, escalations and percentage rent it expects to obtain for such space and the other material economic terms of the leases (including, but not limited to, contributions to operating expenses and taxes). The Owner shall review the proposed leasing plan and the Managing Agent shall make such modifications thereto as the Owner requests and the plan as approved by the Owner is herein referred to as the "Annual Leasing Plan".

The Managing Agent shall, at such times as it deems appropriate or as Owner requests, submit to the Owner for its review and approval proposed modifications to the Annual Budget and the Annual Leasing Plan and comparisons of the Annual Budget to operations for the year to date.

2.6 The Managing Agent shall use its best efforts to rent and keep the Premises rented by procuring tenants for the rentable space in the Premises in accordance with the Annual Leasing Plan. The Managing Agent shall negotiate, on behalf of the Owner in accordance with the Annual Leasing Plan, all leases for space in the Premises, together with any amendments, cancellations, renewals or extensions thereof, but shall not execute any of the foregoing without the prior approval of the Owner. All leases shall be on the most recent standard form approved

by the Owner (with only immaterial changes thereto) and provide for a rental rate (including all required escalations, all as more particularly set forth in the standard form of lease from time to time approved by Owner) per square foot of rentable space under such lease shall not be less than the pro-forma rental approved by Owner in each Annual Leasing Plan.

## ARTICLE III

### COMPENSATION

3.1 Without limitation of any other provision hereof, Managing Agent shall not be entitled to any compensation or reimbursement for services rendered or costs incurred pursuant to this Agreement except to the extent expressly provided herein.

3.2 The following expenses or costs incurred by or on behalf of Managing Agent in connection with the management and leasing of the Premises shall be the sole cost and expense of the Owner; provided, however, that such expenses must be set forth in the Annual Budget (except for any expense or cost that will exceed \$10,000.00 or more for any line item or \$25,000.00 in the aggregate):

(a) Compensation, benefits and any other costs of or relating to the employees or other personnel of Managing Agent or its affiliates or personnel, consultants or supervisors hired by Managing Agent to assist Managing Agent in performing its duties hereunder.

(b) Accounting and reporting services required to be provided by Managing Agent hereunder.

(c) All overhead or general administrative expenses of Managing Agent relating solely to the Premises (including, without limitation, costs of forms, stationery, ledgers, supplies, equipment, telephones, and electronic data processing equipment or services.

3.3 As compensation for performing the management services described herein, the Owner agrees to pay Managing Agent a fee in each month equal to four percent (4%) percent of the Gross Rent collected from the Premises during each calendar month during the term hereof (prorated for partial calendar months at the beginning and end of the term), such amount to be payable in arrears on the first (1st) day of the next succeeding month.

3.4 As an Asset Advisory Fee for all leases secured pursuant to and subject to Section 2.6 hereof, the Owner agrees to pay the Managing Agent at the rate specified in Exhibit "A" attached hereto and by this reference incorporated herein. Provided that the following are set forth in the Annual Budget, all expenses of Managing Agent incurred in such leasing shall be paid by Owner.

## ARTICLE IV

### DEFAULT

4.1 If Managing Agent or Owner shall default in performing or to complying with any of its obligations hereunder or if Managing Agent shall act outside of the scope of its authority, then, the Owner or Managing Agent, as the case may be, may give notice to the other, and if such party does not cure such default to the reasonable satisfaction of the party giving such notice within ten (10) days after receipt of such notice (or if such occurrence is of a nature which cannot be rectified within such ten (10) day period, then within such additional time as may be reasonably required, provided such party promptly commences and thereafter diligently and continuously proceeds to rectify such occurrence until completion) then and in that event, without limitation of any other right or remedy of the non-defaulting party hereunder at law or in equity, this Agreement may be terminated at the option of the non-defaulting party hereunder.

4.2 In the event Managing Agent shall make any assignment for the benefit of creditors or there shall be filed by Managing Agent any petition seeking any arrangement, reorganization, composition, readjustment, liquidation, dissolution, or other similar relief under the present or any future federal bankruptcy code or act or any other present or future applicable federal, state or other statute or law, relating to bankruptcy, insolvency or other relief for debtors, this Agreement may be terminated upon five (5) days written notice to Managing Agent at the option of the Owner.

4.3 In the event any final order, judgment or decree shall be entered, approving a petition seeking reorganization, composition, arrangement with creditors, liquidation or similar relief under any present or future statute, law or regulation with respect to Managing Agent, or appointing a receiver, trustee or liquidator of all or a substantial part of Managing Agent's assets and such order, judgment or decree shall continue unstayed and in effect for an aggregate of sixty (60) days (whether or not consecutive), this Agreement may be terminated at the option of the Owner upon five (5) days written notice to Managing Agent.

4.4 Upon the expiration of the term of this Agreement or any earlier termination, Managing Agent shall forthwith (1) surrender and deliver up to the Owner possession of the Premises and all rents and income, including tenant security deposits, of the Premises and other moneys of the Owner on hand and in any bank account, (2) deliver to the Owner as received any moneys due the Owner under this Agreement, but received after such termination, (3) deliver to the Owner all materials and supplies, keys, contracts and documents, and such other accounting papers and records pertaining to this Agreement as the Owner shall request, (4) assign any right Managing Agent may have in and to any existing contracts relating to the operation and maintenance of the Premises as the Owner shall require and (5) deliver to Owner or Owner's duly appointed agent, the following:

(a) A final accounting, reflecting the balance of income and expenses for the Premises as of the date of termination; and

(b) All records, contracts, leases, receipts for deposits, unpaid bills, summary of all leases in existence at the time of termination and all other papers or documents which pertain to the Premises.

4.5 If this Agreement is terminated as aforesaid, Owner shall recognize the Managing Agent as the broker in any ongoing negotiation for a lease of a portion of the Premises pending at the date of termination of this Agreement, if within the six months following termination of this Agreement such lease is consummated. In such event Owner shall pay Managing Agent a leasing commission with respect thereto in accordance with the provisions of Section 3.4 hereof; provided, however, Managing Agent shall not begin negotiations for any new lease after giving, or receiving notice of termination of this Agreement.

ARTICLE V

MISCELLANEOUS

5.1 The Owner, at its option, may pay directly all taxes, special assessments, ground rents, insurance premiums and mortgage payments and in the event Owner elects to make such payment Managing Agent is relieved of responsibility therefor.

5.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns, provided that Managing Agent shall not be entitled to assign this Agreement or transfer or delegate any third party to perform or undertake any of Managing Agent's duties, services and obligations hereunder without the prior written consent of Owner.

5.3 A. The Owner hereby agrees that it shall protect, defend, indemnify and hold harmless Managing Agent from and against any and all loss, cost, damage, liability and expense (including court costs and reasonable attorneys' fees) arising out of the performance by Managing Agent of its obligations and duties hereunder in accordance with the terms hereof, it being expressly understood that the Owner does not hereby agree to, and shall not, so indemnify Managing Agent from any such loss, costs, damage, liability or expense arising out of the gross negligence, willful or tortious act of Managing Agent or any of its agents, employees or other representatives, or out of any action of Managing Agent, or any of its employees, agents or other representatives taken outside the scope of their authority as provided herein or contrary to any provision hereof.

B. Managing Agent agrees to protect, defend, indemnify and hold the Owner and the Premises harmless from and against any and all loss, cost, damage, liability and expense (including court costs and reasonable attorneys' fees) arising out of (i) obligations or liabilities of Owner incurred by Managing Agent or any of its employees, agents or other

# UNOFFICIAL COPY

99634395

representatives other than those expressly permitted hereby to be so incurred by Managing Agent, (ii) a breach of this Agreement by Managing Agent, (iii) the failure of Managing Agent or any of its agents, officers, employees or representatives to perform Managing Agent's material duties and obligations under this Agreement in accordance with the terms hereof or (iv) any gross negligence, willful or tortious act of Managing Agent or any of its agents, officers, employees or representatives.

5.4 The rights and remedies of the parties hereto shall not be mutually exclusive, i.e., the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provision hereof. Each of the parties confirms that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agrees that, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy, but nothing herein contained is intended to, nor shall it, limit or affect any right or rights at law or by statute or otherwise of any party aggrieved as against the other for breach or threatened breach hereof, it being the intention by this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

5.5 This Agreement including any Exhibits attached hereto, constitute the entire Agreement between the parties hereto relative to the subject matter hereof. Any prior negotiations, correspondence or understandings relative to the subject matter hereof shall be deemed to be merged in this Agreement. This Agreement may not be amended or modified except in writing executed by each of the parties hereto.

5.6 At all times during the term of this Agreement, Owner and Managing Agent shall each have appointed and designated individuals to serve as their respective representatives and agents in the giving or making of any and all approvals, consents, decisions, designations, or other acts required or permitted under this Agreement, and the action of any one such representative and agent shall be irrevocably and conclusively binding upon the party hereunder designated such representative and agent. Owner and Managing Agent may from time to time substitute the designation of their representatives and agents hereunder by written notice to the other party.

5.7 This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

5.8 All notices and other communications provided for in this Agreement shall be in writing and shall be sufficient for all purposes if personally delivered with evidence of receipt or if mailed by certified or registered U.S. Mail, return receipt requested, postage prepaid, and addressed as follows:

# UNOFFICIAL COPY

99634395

- (a) If to the Owner, to:

Renaissance Northwest Highway LLC  
2112 Magnolia Drive  
Highland Park, Illinois 60035

With a mandatory copy to:

Park Ridge Investors, L.L.C.  
360 E. Randolph  
Suite 2403  
Chicago, Illinois 60601

- (b) If to Managing Agent, to:

SP Realty Partners Ltd.  
2112 Magnolia Drive  
Highland Park, Illinois 60035

or to such other address as either party shall hereafter designate by notice to the other as herein provided. All notices, demands and requests shall be effective upon being deposited in the United States mail. However, the time period in which a response of such notice, demand or request must be given shall commence to run from the date of receipt on the return receipt of the notice, demand or request by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent.

5.9 No third party shall be or be deemed to be entitled to the benefit of any obligation of the Managing Agent or the Owner hereunder.

5.10 Should, in the discharge of its duties, Managing Agent require the services of any professional, including but not limited to an attorney, accountant, surveyor or real estate appraiser, Managing Agent shall first ask Owner for its recommendation for the provider of such services, and only with the concurrence of Owner, retain such party on an agreed fixed fee service or at a billing rate approved by Owner. All services performed shall be outlined before any action is taken, except in an emergency, such professional services shall be provided in conformity with Owner's policy.

5.11 Managing Agent agrees that it will substantially comply with all federal, state and local laws and regulations applicable in connection with the services to be rendered by Managing Agent pursuant to this Agreement, and to operate the Premises in substantial conformity with all such laws and regulations.

UNOFFICIAL COPY

99634395

5.12 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, but this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision had never been included.

5.13 Upon entering into this Agreement, it is agreed that any press releases, publicity statements or promotional materials regarding the announcement of this transaction shall be issued by joint agreement between Owner and Managing Agent.

5.14 The right, interest, and claim of the Managing Agent is and shall be and remain at all times subject and subordinate to the lien of any mortgage on the Premises and for all advances made or to be made under the provisions of such mortgage or the note secured thereby. In the event of a default under the mortgage or the loan documents for such mortgage, the lender shall have the right to terminate this Agreement upon written notice to the Managing Agent.

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

OWNER:

RENAISSANCE NORTHWEST HIGHWAY LLC

By: SP LLC, its Managing Member

By: Marvin A. Sotoloff  
Marvin A. Sotoloff, its Managing Member  
MANAGING

MANAGING AGENT:

SP REALTY PARTNERS LTD

By: Marvin A. Sotoloff  
Marvin A. Sotoloff, its President

Exhibit "A" - Schedule of Advisory Fees



# UNOFFICIAL COPY

99634395

## EXHIBIT "A"

### SCHEDULE OF ASSET ADVISORY FEES

Within thirty (30) days of the execution of the Lease Document by all parties, the Asset Advisory Fees to be paid to the Managing Agent shall be as follows

- For new leases without a cooperating broker, Managing Agent will receive 7% of the first year's gross rent and 2% of each subsequent years' gross rent.
- For new leases with a cooperating broker, the cooperating broker will receive 7% of the first year's gross rent and 2% of each subsequent years' gross rent. Managing Agent will receive 3.5% of the first year's gross rent and 1% of each subsequent years' gross rent.
- For renewals without a cooperating broker, Managing Agent shall receive 2% of each years' gross rent.
- For renewals with a cooperating broker, the cooperating broker shall receive 2% of each years' gross rent and Managing Agent shall receive 1% of each years' gross rent.