

**LOAN MODIFICATION
AGREEMENT,
AMENDMENT TO NOTE,
MORTGAGE, AND OTHER
LOAN DOCUMENTS
AND ACKNOWLEDGMENT
OF CO-MAKERS
AND GUARANTORS**



ZC A0018485

This **LOAN MODIFICATION AGREEMENT, AMENDMENT TO NOTE, MORTGAGE, AND OTHER LOAN DOCUMENTS AND ACKNOWLEDGMENT OF GUARANTORS** this ("Modification Agreement") is entered into as of this 16th day of March, 2001, by and among **FIRST BANK AND TRUST COMPANY OF ILLINOIS**, an Illinois banking corporation ("Lender"), **FIRST BANK AND TRUST COMPANY OF ILLINOIS**, as Trustee under Trust Agreement dated March 16, 2000, and known as Trust No. 10-2391 (the "Trustee"), **HD PROPERTY ACQUISITION, LLC**, an Illinois limited liability company ("Beneficiary") (Trustee and Beneficiary shall hereinafter be collectively referred to as "Borrower"), **JOHN M. MULLEN**, an individual, ("Mullen") and **JOHN KLISE**, an individual, ("Klise") (Mullen and Klise shall hereinafter be collectively referred to as the "Guarantors").

WITNESSETH:

WHEREAS, Lender and Borrower have entered into a certain Construction Loan Agreement dated March 29, 2000 (the "Loan Agreement"), whereby Lender agreed to lend Borrower the principal amount of \$1,850,000.00 (the "Loan") secured in part by certain real property commonly known as 6963-6969 North Ashland Avenue, Chicago, Illinois as more fully described on Exhibit A attached hereto and made a part hereof (the "Property").

WHEREAS, to evidence the Loan, Borrower executed and delivered to Lender that certain Secured Demand Note dated March 29, 2000, in the principal amount of \$1,850,000.00 and which shall be hereinafter referred to as the "Note";

WHEREAS, payment of the Note is secured by, among other things, the following instruments of even date with the Note:

This instrument prepared by (and return after recording to):

Robert W. Glantz, Esq.
SHAW GUSSIS DOMANSKIS FISHMAN & GLANTZ
111 West Washington, Suite 707
Chicago, Illinois 60602

BOX 333-CT1

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- (1) Construction Loan Agreement;
- (2) Construction Mortgage, Security Agreement Financing Statement by the Borrower recorded April 7, 2000, in the real estate records of Cook County as Document Number 00244993 (the "Mortgage");
- (3) Assignment of Leases and Rents (the "Assignment of Rents") by the Borrower recorded in the real estate records of Cook County as Document Number 00244994 (the "Assignment of Rents");
- (4) Collateral Assignment of Beneficial Interest (the "Collateral Assignment") from Beneficiary;
- (5) Environmental Indemnity Agreement (the "Environmental Indemnity") from Beneficiary and Guarantors; and
- (6) Guaranty and Subordination Agreements (the "Guaranty") from Guarantors.

[The Loan Agreement, Note, this Modification Agreement, Amended Note (as hereinafter defined), Mortgage, Assignment of Rents, Collateral Assignment, Environmental Indemnity and Guaranty shall hereinafter be collectively referred to as the "Loan Documents"]

WHEREAS, Borrower has requested that Lender advance an additional \$150,000.00 to Borrower and extend the Maturity Date until the earlier of demand made by Lender or September 1, 1999;

WHEREAS, Lender is willing to advance an additional \$150,000.00 and extend the Maturity Date upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in considerations of the covenant and agreements hereinafter set forth, and also in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid to Lender by Borrower, the parties hereto agree as follows:

1. **Amendment and Restatement of Note**. Simultaneously with the execution and delivery of this Modification Agreement, the Note has been amended and restated in its entirety pursuant to Borrower's execution and delivery of an Amended and Restated Secured Demand Note effective as of March 16, 2001, payable to Lender in the principal amount of \$2,000,000.00, (the aforesaid Amended and Restated Secured Demand Note, as amended, extended, renewed or consolidated from time to time in substitution or replacement therefor, being hereinafter referred to as the "Amended Note"). The Amended Note amends and restates the terms of the Note and replaces and supersedes the Note as evidence of the indebtedness heretofore evidenced by the Note. Neither the execution, delivery and acceptance of the Amended Note or this Modification Agreement nor any of the terms and provisions set forth in the Amended Note

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or this Modification Agreement shall be deemed to have been paid, extinguished, released, satisfied or discharged.

1. **Amendment of Loan Agreement.** The following amendments are hereby made to the Loan Agreement:

- (a) The definition of "Loan Amount" shall be amended to be the principal amount of \$2,000,000.00;
- (b) The Interest Rate shall be Two percent (2%) per annum plus the Prime Rate calculated on the daily basis of a 360 day year. Notwithstanding anything contained in the Loan Agreement or any of the other Loan Documents to the contrary, the Interest Rate shall never be less than Ten and One Half Percent (10.5%); and
- (c) The definition of "Maturity Date" shall be amended to be the earlier of (i) demand made upon Borrower by Lender, or (ii) March 29, 2002.

2. **Amendment of Mortgage, Assignment of Rents and other Loan Documents.** The amended Loan Amount shall be reflected in the Loan Documents. The Maturity Date of the Loan shall be the earlier of (a) demand made upon Borrower by Lender, or (b) March 29, 2002.

3. **Modification/Extension Fee.** Borrower acknowledges that as partial consideration for Lender increasing the Loan Amount and amending the maturity date of the Loan, as provided in this Modification Agreement, the Amended Note shall accrue a fee payable to Lender in the amount of \$40,000.00 as of the date of this Modification Agreement.

4. **Covenants of Borrower.** Borrower hereby represents to and covenants with Lender that:

- (a) At the date hereof, the Loan Documents as amended hereby are in full force and effect, and Borrower is not in default in the payment of any sums, charges or obligations under the Loan Documents or in the payment or performance of any covenants, agreements or conditions of Borrower contained in the Loan Documents;
- (b) At the date hereof, Borrower has no right or claim of set-off, discount, deduction, defense or counterclaim which could be asserted in any action brought to enforce the Loan Documents;
- (c) Lender is not in default in the performance or observance of any of its covenants, agreements and obligations under the Loan Documents;

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- (d) There are no actions, suits or proceedings (including, without limitation, proceedings before any court, arbitrator or governmental authority or agency) pending or threatened against Borrower (or to the knowledge of Borrower any basis for any such action, suit or proceeding), which if adversely determined, might individually, or in the aggregate, materially adversely:
- i) impair the ability of Borrower to pay or perform its obligations under the Loan Documents; or
 - ii) affect the assets pledged as collateral under the Loan Documents;
- (e) There is no presently known fact which affects, or may affect in the future (so far as the undersigned can foresee), materially and adversely the condition (financial or other) of Borrower to pay or perform its obligations under the Loan Documents; and
- (f) Neither the Loan Documents nor any other document or written materials delivered or made, and any other communication made, to Lender or any employee or agent of Lender contains any untrue statement of a material fact or fails to state a material fact necessary in order to make any statement contained therein not misleading in light of the circumstances in which such statement was made.

5. **Acknowledgment and Consent of Guarantors.** John M. Mullen and John Klise as guarantors under the Guaranty, hereby acknowledge and consent to the modification of the Loan Documents as herein provided and, in consideration of the modification of the terms of the Loan Documents, hereby agree that:

- (a) The modification of the Loan Documents as herein provided does not and shall not in any way limit, prejudice or impair the obligations of John M. Mullen and John Klise, as guarantors under the Amended Note, or the rights, powers, privileges, benefits and remedies of Lender under the Loan Documents;
- (b) The Guaranty constitutes a valid and binding obligation of John M. Mullen and John Klise to pay unconditionally and absolutely the entire amount of the indebtedness evidenced by the Amended Note, which obligations are enforceable in accordance with the terms and conditions of the Loan Documents, as modified by the terms of this Modification Agreement; and
- (c) John M. Mullen and John Klise hereby waive all errors and imperfections, if any, in the Amended Note or any of the other Loan Documents, and all defenses, if any, on account thereof in case of any subsequent action to enforce any of the Loan Documents.

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6. Title Policy Endorsements and Legal Opinion. Concurrently with the execution of this Modification Agreement, Borrower, at its sole cost and expense, shall obtain and deliver to Lender:

- (a) An endorsement to Loan Policy of title insurance issued by Chicago Title Insurance Company the ("Policy"), extending the effective date of the Policy through the recording of this Modification Agreement, insuring this Modification Agreement in Schedule A of the Policy, and insuring the priority of the Mortgage as modified by this Modification Agreement;
- (b) An endorsement to the Policy assuring Lender that the lien of the Mortgage shall not be impaired by reason of the changes in the Loan Amount. Endorsements pursuant to subparagraphs (a) and (b) of this Paragraph 7 shall be delivered to Lender simultaneously with and as a condition to the recordation of this Modification Agreement and shall be in form and content satisfactory to Lender; and
- (c) Two copies of an opinion executed by Borrower's attorney (acceptable to Lender) describing this Modification Agreement and all other Loan Documents executed in connection herewith and favorably opining:
- i) the authority of Borrower to consummate this Modification Agreement;
 - ii) the due and proper execution of this Modification Agreement and all other loan modification documents;
 - iii) the validity, binding effect and enforceability of this Modification Agreement, all other Loan Documents, specifying that they are not subject to defenses of or claims based on usury or lack of capacity or any other claims or defenses;
 - iv) the availability of exemptions for usury laws;
 - v) that to the best of counsel's knowledge, after reasonable investigation and inquiry to the Borrower, the nonexistence of any undisclosed litigation involving the Borrower or the Property, which could affect any of Lender's rights, powers or security under the Loan Documents or this Modification Agreement;
 - vi) that to the best of counsel's knowledge, after reasonable investigation and inquiry to the Borrower and review of necessary documentation, the nonexistence of any conflict or breach of any mortgage, agreement, covenant, restriction, law, rule, regulation, judgement or decree affecting or binding Borrower, with this

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Modification Agreement or any other Loan Document on account of the execution, delivery or performance of this Modification Agreement or any of the other Loan Documents; and

- vii) any other matters reasonably required by Lender.

7. No Waiver. Notwithstanding anything contained in this Modification Agreement to the contrary or any prior act of Lender or any procedure established by Lender with regard to the Loan, Borrower acknowledges and agrees that Lender has not heretofore waived any of its rights or remedies under the Loan Documents nor has Lender waived any of the duties or obligations of Borrower thereunder. No waiver by Lender of any covenant or condition under the Loan Documents shall be deemed a waiver of any subsequent breach of the same or any other covenant or condition. No covenant, term or condition of the Loan Documents shall be deemed waived by Lender unless waived in writing.

8. Miscellaneous.

- (a) Time is of the essence with respect to the payment, performance and observance of each and every covenant, agreement, condition, representation, warranty and obligation of Borrower under the Loan Documents.
- (b) This Modification Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute and be taken as one and the same instrument.
- (c) None of the covenants, terms or conditions of this Modification Agreement shall in any manner be altered, waived, modified, changed or abandoned, except by written instrument, duly signed and delivered by all the parties hereto.
- (d) This Modification Agreement contains the entire agreement between the parties hereto as to the subject matter hereof and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise, of any kind.
- (e) The recitals to this Modification Agreement are hereby incorporated into and made a part of this Modification Agreement, and shall constitute covenants and representations of Borrower and shall be binding upon and enforceable against Borrower.
- (f) Any defined terms contained in this Modification agreement not otherwise defined in this Modification Agreement shall have the meaning as set forth in the Loan Agreement.

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9. **Limitations on Liability of Land Trust.** This instrument is executed by First Bank and Trust Company of Illinois, not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and such Trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Trustee personally to pay any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained (it being understood and agreed that each of the provisions hereof, except the warranty hereinabove contained, shall constitute a condition and not a covenant or agreement regardless of whether the same may be couched in language of a promise or covenant or agreement), all such personal liability, if any, being expressly waived by the Lender and by every person now or hereafter claiming any right hereunder, and that so far as the said Trustee is concerned, the Lender shall look solely to the security granted by the Loan documents or instruments or guaranties evidencing or securing the indebtedness secured hereby for the payment thereof, by the enforcement of the liens, charges and other rights created by said Loan Documents in the manner herein and in said Loan Documents provided.

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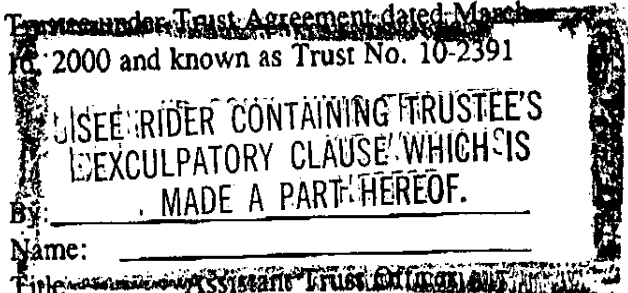
IN WITNESS WHEREOF, the undersigned executed or caused this Modification Agreement to be executed as of the day and year first above written.

FIRST BANK AND TRUST COMPANY OF ILLINOIS, an Illinois Banking corporation

By: [Signature]
Name: MARNEE BUNNEY
Its: LOAN OFFICER

FIRST BANK AND TRUST COMPANY OF ILLINOIS, not personally, but solely as Trustee under Trust Agreement dated March 16, 2000 and known as Trust No. 10-2391

BY: [Signature]
Name: _____
Title: ASSISTANT TRUST OFFICER



HD PROPERTY ACQUISITION, an Illinois limited liability company

By: [Signature]
Name: John M. Mullen
Its: Manager

JOHN M. MULLEN

[Signature]

JOHN KLISE

By: _____
Name: John Klise
Its: _____

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IN WITNESS WHEREOF, the undersigned executed or caused this Modification Agreement to be executed as of the day and year first above written.

FIRST BANK AND TRUST COMPANY OF ILLINOIS, an Illinois Banking corporation

By: _____
Name: _____
Its: _____

FIRST BANK AND TRUST COMPANY OF ILLINOIS, not personally, but solely as Trustee under Trust Agreement dated March 15, 2000 and known as Trust No. 10-2391

SEE RIDER CONTAINING TRUSTEE'S EXCULPATORY CLAUSE WHICH IS MADE A PART HEREOF.
By: _____
Name: _____
Title: Assistant Trust Officer

HD PROPERTY ACQUISITION, an Illinois limited liability company

By: _____
Name: John M. Mullen
Its: Manager

JOHN M. MULLEN

JOHN KLISE

By: _____
Name: John Klise
Its: _____

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10/10/10

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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOHN KLISE, 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 severally acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

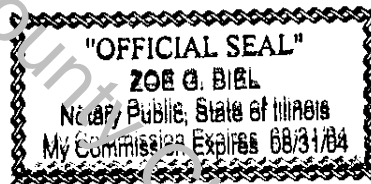
Given under my hand and Notarial Seal this 20 day of March, 2001.

[Handwritten Signature]

Notary Public

My Commission expires:

August 31, 2007



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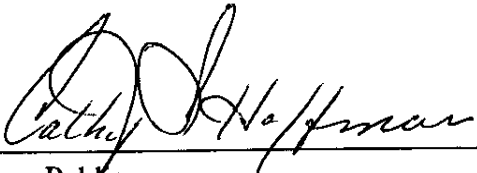
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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOHN M. MULLEN, 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 severally acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 22 day of March, 2001.





Notary Public

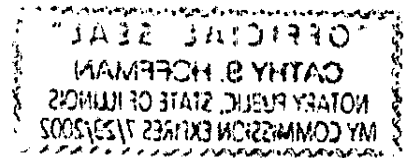
My Commission expires:

7-29-02

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This LOAN MODIFICATION AGREEMENT, AMENDMENT TO NOTE, MORTGAGE, AND OTHER LOAN DOCUMENTS AND ACKNOWLEDGMENT OF CO-MAKERS AND GUARANTORS IS ENTERED INTO AS OF THE 16TH DAY OF MARCH 2001 BY FIRST BANK AND TRUST COMPANY OF ILLINOIS, FIRST BANK AND TRUST COMPANY OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 16, 2000 AND KNOWN AS TRUST NO. 10-2391, HD PROPERTY ACQUISITION, LLC, JOHN M. MULLEN AND JOHN KLISE and is executed by the Trust not personally, but solely as Trustee under and pursuant to that certain Trust Agreement hereinafter described and the Trustee does not obligate itself hereunder, anything herein contained to the contrary notwithstanding, to the performance of any of the terms, conditions and representations made and contained in the within instrument, it being specifically understood by any and all parties dealing with this instrument that said Trustee has affixed its signature hereto as such Trustee by direction in behalf of the beneficiary or beneficiaries under the said trust without any intention of binding the said Trustee in its individual capacity. The Trustee has no knowledge of the factual matters herein contained and all agreements, conditions and representations are made solely upon the direction in behalf of the beneficiary or beneficiaries as aforesaid, and no personal liability shall be asserted to be enforceable against said Bank or Trust by reason hereof or thereof, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, First Bank and Trust Company of Illinois (formerly known as First Bank and Trust Co., Palatine, Illinois) not personally, but as Trustee under the provisions of a Trust Agreement dated MARCH 16, 2000 and known as Trust Number 10-2391, has caused these present to be signed by its Trust Officer and Assistant Trust Officer, and its corporate seal to be hereunto affixed and attested by its Assistant Trust Officer this 22nd day of MARCH 2001.

FIRST BANK AND TRUST COMPANY OF ILLINOIS
(formerly known as First Bank and Trust Company, Palatine,
Illinois), as Trustee under Trust Number 10-2391 and not
individually.

BY: _____

Trust Officer

ATTEST: _____

Assistant Trust Officer

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I THERESA K. ENSEY, a Notary Public in and for said County in State aforesaid, DO HEREBY CERTIFY THAT JEREMY ADDIS, Trust Officer and CARL R. RATH, Assistant Trust Officer, of First Bank and Trust Company of Illinois (formerly known as First Bank and Trust Co., Palatine, Illinois), who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer and Assistant Trust Officer, respectively, appeared before me this day in person and acknowledge that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company, as Trustee as aforesaid, for the uses and purposes then set forth; and the said Assistant Trust Officer, then and there acknowledged that he, as custodian of the corporate seal of said Company, did affix the corporate seal of said Company to said instrument as his own free and voluntary act as the free and voluntary act of said Company, as Trustee aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 22nd day of MARCH, 2001.



Theresa K Ensey
NOTARY PUBLIC

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EXHIBIT A

LEGAL DESCRIPTION

UNIT NUMBERS 6963-1W, 6969-1W, 6963-1E, 6969-1N, 6967-1S, 6967-1N, 6963-2W, 6969-2W, 6963-2E, 6969-2E, 6967-2S, 6967-2N, 6963-3W, 6969-3W, 6963-3E, 6967-3S, AND 6967-3W IN 6963-69 NORTH ASHLAND CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

LOTS 9 AND 10 IN BLOCK 31 IN ROGERS PARK, BEING A SUBDIVISION OF THE NORTHEAST 1/4 AND THAT PART OF THE NORTHWEST 1/4 LYING EAST OF RIDGE ROAD, OF SECTION 31, ALSO THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 32, ALSO ALL OF SECTION 30 LYING SOUTH OF THE INDIAN BOUNDARY LINE ALL IN TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 08015405, TOGETHER WITH ITS UNDIVIDED PERCENTAGE

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