

UNOFFICIAL COPY

0020079761

1337/0268 07 001 Page 1 of 23
2002-01-18 12:48:52
Cook County Recorder 127.00

THIS DOCUMENT PREPARED BY AND AFTER
RECORDING TO BE RETURNED TO:
THOMAS P. DUFFY, ESQ.
WILDMAN, HARROLD, ALLEN & DIXON
225 WEST WACKER DRIVE
SUITE 2600
CHICAGO, ILLINOIS 60606



Property of Cook County Clerk's Office

**SECOND AMENDMENT TO
MORTGAGE AND LOAN DOCUMENTS**

This Agreement (this "Amendment") is dated as of November 20, 2001, and is by and among LA SALLE BANK NATIONAL ASSOCIATION, as successor to AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee under a Trust Agreement dated August 1, 1989, and known as Trust No. 109086-06 (the "Mortgagor"), CHARLES R. MALK ("Guarantor") and COLE TAYLOR BANK, an Illinois banking corporation ("Mortgagee").

RECITALS

A. Mortgagee extended a credit facility to Mortgagor in the original principal amount of One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00).

B. In connection with the credit facility referred to in Recital A, Mortgagor executed and delivered to Mortgagee a Note (the "Original Note") dated as of November 15, 1999, in the original principal amount of One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00).

C. The Loan as evidenced by the Original Note is secured by (i) a Mortgage (the "Mortgage") dated as of November 15, 1999, executed by Mortgagor in favor of Mortgagee, encumbering the property legally described on attached Exhibit A (the "Premises"), which Mortgage was recorded with the Recorder of Deeds for Cook County, Illinois on November 30, 1999, as Document No. 09116864; (ii) a Collateral Assignment of Rents and Leases ("Assignment of Rents") dated as of November 15, 1999, executed by Mortgagor in favor of Mortgagee encumbering the Premises, which Assignment of Rents were recorded with the Recorder of Deeds for Cook County, Illinois on November 30, 1999, as Document No. 09116865; (iii) a Security Agreement

BOX 333-CTT

7840233,655, DA

23
P

UNOFFICIAL COPY

Property of Cook County Clerk's Office

ITD-ESP Y09

UNOFFICIAL COPY

and Collateral Assignment of Beneficial Interest in Land Trust (the "CABI") dated as of November 15, 1999, executed by 1500 North Kingsbury General Partnership, an Illinois general partnership ("Beneficiary"), in favor of Mortgagee, which collaterally assigns 100% of the beneficial interest in and to Mortgagor to Mortgagee; (iv) an Absolute and Unconditional Guaranty (the "Guaranty") dated as of November 15, 1999, executed by Charles R. Malk in favor of Mortgagee; (v) an Environmental Indemnity Agreement dated as of November 15, 1999, executed by Charles R. Malk in favor of Mortgagee; (vi) UCC-1 and UCC-2 Financing Statements executed by Mortgagor; and (vii) such other collateral documents delivered in connection with the Original Note.

D. Pursuant to an Amendment to Mortgage and Loan Documents (the "First Amendment") dated as of August 15, 2000, by and between Mortgagor, Guarantor and Mortgagee, which was recorded with the Recorder of Deeds for Cook County, Illinois on August 24, 2000, as Document No. 00656722, the parties amended the Loan Documents to provide for, among other things, (i) an increase in the amount of the Loan from One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00) to One Million Nine Hundred Fifty Thousand and No/100 Dollars (\$1,950,000.00) with the increase in the Loan to be used for the purposes set forth in the First Amendment and (ii) an increase in the Loan Rate to eight and 67/100 percent (8.67%) per annum.

E. In connection with the First Amendment, Mortgagor executed and delivered to Mortgagee an Amended and Restated Note (the "Existing Note") dated as of August 15, 2000, in the original principal amount of One Million Nine Hundred Fifty Thousand and No/100 Dollars (\$1,950,000.00) and a Reaffirmation of Guaranty dated as of August 15, 2000, executed by Guarantor to and for the benefit of Lender. Concurrent with the execution of the First Amendment, Guarantor became the owner of 100% of the beneficial interest and power of direction in Mortgagor.

The documents set forth in Recitals A - E above, together with any amendments, modifications, extensions or renewals thereof, are hereinafter individually and collectively referred to as the "Loan Documents".

F. As of the date hereof, the outstanding principal balance and accrued interest of the Loan is \$1,911,609.85.

G. The parties desire to further amend the Loan Documents to provide for, among other things, the extension of the stated maturity date of the Loan from November 30, 2002, to April 1, 2005 and reducing the Loan Rate commencing November 20, 2001, to seven and 75/100 percent (7.75%) per annum and other certain terms and provisions as hereinafter provided.

H. Mortgagor, Guarantor and Mortgagee deem it to be in their best interests to modify the Loan Documents as hereinafter provided.

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree acknowledge and agree as follows:

20079761

UNOFFICIAL COPY

1. All capitalized terms used herein shall have the same meaning as such terms are used in the Loan Documents.

2. The Recitals are hereby incorporated into and shall become part of this Amendment.

3. Concurrent with the execution and delivery of this Amendment, Mortgagor and/or Guarantor shall execute and deliver to Mortgagee the following documents:

A. Mortgagor shall execute and deliver to Mortgagee an Amended and Restated Note (the "Amended and Restated Note") dated as of the date hereof in the original principal amount of One Million Nine Hundred Eleven Thousand Six Hundred Nine and 85/100 Dollars (\$1,911,609.85) payable to the order of Mortgagee, in the form attached hereto as Exhibit B, the terms of which are hereby incorporated by reference herein. The Amended and Restated Note shall evidence the Loan, as hereby modified, and the indebtedness, liabilities and obligations of Mortgagor in favor of Mortgagee under the Existing Note, which Mortgagor hereby reaffirms and restates. The Amended and Restated Note shall supersede the Existing Note and shall be secured by and entitled to all of the benefits of the Loan Documents.

B. Guarantor shall execute and deliver to Mortgagee a Reaffirmation of Guaranty dated as of the date hereof executed by Guarantor in favor of Mortgagee in the form attached hereto as Exhibit C, the terms of which are hereby incorporated by reference herein.

6. All references in the Loan Documents to "Principal Sum" shall mean One Million Nine Hundred Eleven Thousand Six Hundred Nine and 85/100 Dollars (\$1,911,609.85).

7. All references in the Loan Documents to the Existing Note dated as of August 15, 2000, executed by Mortgagor payable to the order of Mortgagee in the original principal amount of One Million Nine Hundred Fifty Thousand and No/100 Dollars (\$1,950,000.00) are hereby deleted and the Amended and Restated Note dated as of November 20, 2001, executed by Mortgagor payable to the order of Mortgagee in the original principal amount of One Million Nine Hundred Eleven Thousand Six Hundred Nine and 85/100 Dollars (\$1,911,609.85) is hereby inserted in lieu thereof, which Amended and Restated Note is and shall be secured by the Loan Documents.

8. The "Loan Rate" as defined in the Mortgage is hereby reduced to seven and 75/100 percent (7.75%) per annum.

9. Concurrently with the execution of this Amendment, Mortgagor and Guarantor shall deliver to Lender all of the documents which are required to be delivered by Mortgagor and Guarantor to Lender pursuant to this Amendment and which are set forth on the Loan Closing Checklist attached hereto as Exhibit D.

UNOFFICIAL COPY

10. Mortgagor and Guarantor represent and warrant that no Event of Default has occurred under the Loan Documents and Mortgagor and Guarantor hereby reaffirm all of their representations, covenants, agreements and obligations under the Loan Documents, as hereby amended, and agree that the Loan Documents, as hereby amended, secure Mortgagor's and Guarantor's obligations under the Loan.

11. In all other respects, the terms and provisions of the Loan Documents, as hereby amended, shall remain in full force and effect.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

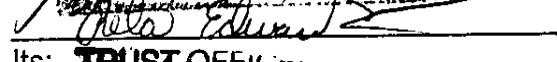
IN WITNESS WHEREOF, Mortgagor, Guarantor and Lender have executed this Amendment as of the date and year first above written.

MORTGAGOR:

LA SALLE BANK NATIONAL ASSOCIATION, as successor to AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee under a Trust Agreement dated August 1, 1989, and known as Trust No. 109086-06 ~~and not personally~~

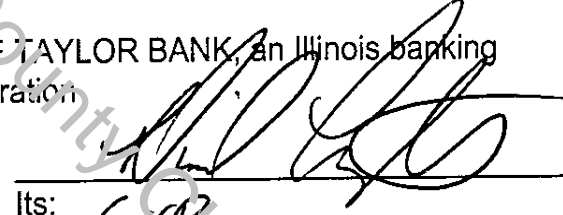
Trustee's Exoneration under attached hereto and made a part thereof.

By 
Its: **Trust Administrator**

By 
Its: **TRUST OFFICER**

GUARANTOR:

CHARLES R. MALK, Individually

LENDER:
COLE TAYLOR BANK, an Illinois banking corporation
By 
Its: **SVP**

Property of Cook County Clerk's Office

20079761



UNOFFICIAL COPY

RIDER ATTACHED TO AND MADE A PART OF

MORTGAGE (TRANSFER AGREEMENT)
(EXTENSION AGREEMENT)
(ADDITIONAL ADVANCE AGREEMENT)
(SECOND AMENDMENT TO MORTGAGE AND LOAN DOCUMENTS)

DATED November 20, 2001 UNDER TRUST NO. 109086-06

This instrument is executed by **LASALLE BANK NATIONAL ASSOCIATION**, not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants, and conditions to be performed by **LASALLE BANK NATIONAL ASSOCIATION** are undertaken by it solely as Trustee as aforesaid, and not individually and no personal liability shall be asserted to be enforceable against **LASALLE BANK NATIONAL ASSOCIATION** by reason of anything contained in said instrument, or in any previously executed document, whether or not executed by said **LASALLE BANK NATIONAL ASSOCIATION**, either individually or as Trustee as aforesaid, relating to the subject matter of the attached agreement, all such personal liability, if any, being expressly waived by every person now or hereafter claiming any right or security hereunder. No duty shall rest upon **LASALLE BANK NATIONAL ASSOCIATION**, personally or as said Trustee to sequester the rents, issues and profits arising from the disposition thereof; but so far as said trustee and its successors and said **LASALLE BANK NATIONAL ASSOCIATION** personally are concerned, the legal holder or holders of this instrument and the owner or owners of any indebtedness accruing hereunder shall look solely to the mortgaged real estate for the payment thereof, by enforcement of the lien heretofore created in the manner provided therefore and as provided in said note or by action to enforce the personal liability of the guarantor, if any. Trustee does not warrant, indemnify, defend title nor is it responsible for any environment damage.

20079761

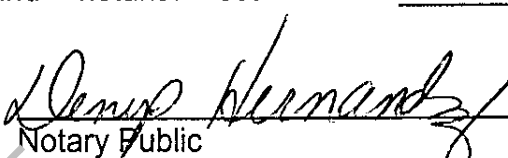
UNOFFICIAL COPY

STATE OF

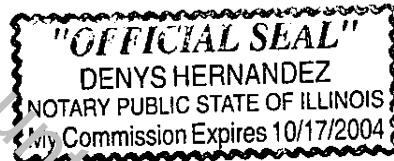
COUNTY OF

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that Reta Edwards and Lourdes Martinez, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer and Trust Administrator of LA SALLE BANK NATIONAL ASSOCIATION, as successor to AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee under a Trust Agreement dated August 1, 1989, and known as Trust No. 109086-06, appeared before me and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Illinois banking corporation, as Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 26th day of December, 2001.


Notary Public

My Commission Expires: 10-17-04



UNOFFICIAL COPY

STATE OF

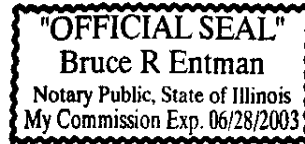
COUNTY OF

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that CHARLES R. MALK, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of December, 2001.

Bruce R Entman
Notary Public

My Commission Expires:



UNOFFICIAL COPY

STATE OF

COUNTY OF

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that David Livingston, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice President and of COLE TAYLOR BANK, an Illinois banking corporation, appeared before me and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 9th day of January, 2002.

Cheryl Travis
Notary Public

My Commission Expires:



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LOTS 8 THROUGH 12 INCLUSIVE IN BLOCK 46 IN ELSTON ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office
Pia #: 17-05-212-006
17-05-212-007
17-05-212-008
17-05-212-009
17-05-212-010

UNOFFICIAL COPY

EXHIBIT B

AMENDED AND RESTATED NOTE

\$1,911,609.85

State of Illinois
November 20, 2001

1.1 Description of Parties. This Note is made by LA SALLE BANK NATIONAL ASSOCIATION, as successor to AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but as Trustee under a Trust Agreement dated August 1, 1989, and known as Trust No. 109086-06 (hereinafter referred to as "Borrower") and is payable to the order of COLE TAYLOR BANK, an Illinois banking corporation (hereinafter referred to as the "Lender") evidencing a loan (hereinafter referred to as the "Loan") from Lender to Borrower. This Note supersedes and replaces that certain Note dated as of August 15, 2000, executed by Borrower payable to the order of Lender in the original principal amount of One Million Nine Hundred Fifty Thousand And No/100 Dollars (\$1,950,000.00).

1.2 Payment.

FOR VALUE RECEIVED, Borrower promises to pay on or before April 1, 2005, in lawful money of the United States of America to the order of Lender the principal amount of ONE MILLION NINE HUNDRED ELEVEN THOUSAND SIX HUNDRED NINE AND 85/100 DOLLARS (\$1,911,609.85) ("Principal Sum"), together with interest on the principal balance of this Note remaining from time to time unpaid (the "Principal Balance") as follows:

Forty (40) equal consecutive monthly payments of principal and interest in the amount of Fourteen Thousand Four Hundred Thirty-Eight and 94/100 Dollars (\$14,438.94) each shall be payable commencing on the first day of December, 2001, and thereafter on the first day of each succeeding month through and including March 1, 2005, with a final balloon payment of all of the Principal Balance due hereunder and unpaid interest accrued thereon which shall become due, if not sooner paid or due by acceleration or otherwise, on April 1, 2005 (the "Maturity Date"). Interest shall accrue on the Principal Balance of this Note from the date of the initial disbursement of the proceeds of this Note at the Loan Rate (hereinafter defined). Notwithstanding the foregoing, after maturity of this Note or upon the occurrence and continuation of an Event of Default (hereinafter defined), the interest rate on the Principal Balance of this Note shall be increased to the Default Rate (hereinafter defined) until this Note is fully paid.

The time is hereby extended for the payment of any monthly payment or for performance of any act or for the exercise of any right if the due date thereof falls on

UNOFFICIAL COPY

a Saturday, Sunday or any other day which is not a business day of Lender. Such payment shall be made or act performed or right exercised on the next succeeding business day of Lender with the same force and effect as if done on the nominal dates provided in this Note.

1.3 Interest.

(a) Default Rate Defined. The "Default Rate" as used herein shall mean the Loan Rate plus three percent (3%) per annum.

(b) Loan Rate Defined. The "Loan Rate" shall mean the per annum rate of seven and 75/100 percent (7.75%).

(c) Interest Rate Computation. All interest calculated hereunder shall be computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) thirty (30) day months and calculated for the actual number of days elapsed.

(d) Application of Payments. All payments made hereunder shall be applied first to the payment of accrued interest and the remainder, if any, shall be applied to the Principal Balance.

(e) Late Charge. In the event any payment due under this Note becomes overdue, Borrower shall pay Lender a "late charge" of four cents (\$.04) for each dollar so overdue. The late charge shall be due and payable with the next payment due hereunder.

2.1 Description of Security. The payment of this Note is secured by:

(a) Mortgage dated as of November 15, 1999 executed by Borrower, as Mortgagor, in favor of Lender, as Mortgagee, encumbering the property legally described therein (the "Mortgaged Premises"), as amended by an Amendment to Mortgage and Loan Documents (the "Amendment") dated as of August 15, 2000, by and among Borrower, Charles R. Malk ("Guarantor") and Lender and as further amended by a Second Amendment to Mortgage and Loan Documents (the "Second Amendment") dated as of November 20, 2001, by and among Borrower, Guarantor and Lender;

(b) Collateral Assignment of Rents and Leases dated as of November 15, 1999 executed by Borrower, as Assignor, in favor of Lender, as Assignee, encumbering the Mortgaged Premises, as amended by the Amendment and Second Amendment;

(c) Security Agreement and Collateral Assignment of Beneficial Interest under Land Trust dated as of November 15, 1999 executed by 1500 North Kingsbury General Partnership, an Illinois general partnership ("Beneficiary"), which collaterally assigns 100% of the beneficial interest in and to Borrower to Lender, as amended by the Amendment and Second Amendment;

UNOFFICIAL COPY

(d) Absolute and Unconditional Guaranty dated as of November 15, 1999 executed by Charles R. Malk ("Guarantor") in favor of Lender, as reaffirmed by Reaffirmations of Guaranty dated as of August 15, 2000 and November 20, 2001, respectively;

(e) Environmental Indemnity Agreement dated as of November 15, 1999 executed by Guarantor in favor of Lender, as amended by the Amendment and Second Amendment;

(f) UCC-1 and UCC-2 Financing Statements executed by Borrower;

and other collateral documents delivered in connection with this Note, together with any amendments, modifications, renewals and replacements thereof and any and all other instruments now or hereinafter given to Lender (the "Loan Documents").

2.2 Prepayment. The Principal Balance and any accrued interest may be prepaid in its entirety or partially prepaid at any time without a prepayment penalty.

If any funds are received and applied on account of this Note by the Lender pursuant to its rights under the Loan Documents, it shall be applied pursuant to Paragraph 1.3(d) above. The payments under Paragraph 1.2 above shall continue on the Principal Balance until said Principal Balance is fully retired.

2.3 Place of Payment. The payments of all amounts due under the Loan Documents shall be made at the office of Lender at 5501 West 79th Street, Burbank, Illinois 60459 or such other place as Lender may from time to time designate in writing.

3.1 Events of Default. If the occurrence of any one or more of the following events ("Events of Default") shall occur:

(a) failure to make payment on or before five (5) days after the date any payment of principal or interest is due hereunder;

(b) failure to perform or observe, within thirty (30) days after written notice from Lender to Borrower, any other covenant, promise or agreement contained herein; provided, however, that if the same cannot be reasonably performed or observed within said thirty (30) day period, and Borrower has otherwise commenced such performance or observance and thereafter diligently pursues the same, then no Event of Default shall be deemed to exist hereunder, unless such failure materially and adversely affects the collateral security for the indebtedness evidenced hereby or the ability of Borrower to repay the same; further provided, in no event shall such extended period to cure such failure exceed sixty (60) days;

20079761

UNOFFICIAL COPY

(c) the occurrence of an "Event of Default" (as defined in the other Loan Documents) under any of the other Loan Documents, the terms of which are hereby incorporated by reference herein;

(d) failure to make payment on or before the date when any payment of any indebtedness or obligation is due or owing from Borrower or any guarantor of the Loan in favor of Lender;

(e) the occurrence of a Prohibited Transfer, as defined in the Mortgage, the terms of which are hereby incorporated by reference herein;

then, at any time thereafter, at the sole option of Lender, without further notice to Borrower, the Maturity Date shall be accelerated and the Principal Balance and all accrued interest thereon together with any other sums due under the Loan Documents shall become immediately due and payable without presentment, demand, notice or protest of any kind, all of which are expressly waived by the Borrower.

3.2 Nature of Remedies. Lender's remedies under this Note and the Loan Documents, shall be cumulative and concurrent and may be pursued singly, successively, or together against Borrower and any guarantor of the Loan, the Mortgaged Premises or any portion or combination thereof, and Lender may resort to every other right or remedy available at law or in equity without first exhausting the rights and remedies contained herein, all in Lender's sole discretion. Failure of Lender, for any period of time or on more than one occasion, to exercise its option to accelerate the maturity of this Note, or to give any notice required as a condition precedent to the occurrence of an Event of Default, shall not constitute a waiver of the right to exercise such option or give such notice at any time during the continued existence of the event or events giving rise to the Lender's ability to exercise such option or give such notice. Lender shall not by any other omission or act be deemed to waive any of its rights or remedies hereunder unless such waiver be in writing and signed by Lender, and then only to the extent specifically set forth therein. A waiver in connection with one event shall not be construed as continuing or as a bar to or waiver of any right or remedy in connection with a subsequent event. Lender, may without demand or notice, appropriate and apply toward any indebtedness or obligation due Lender from Borrower any balances, credits, deposits, accounts, money or other property of Borrower in the possession, custody or control of Lender.

3.3 Collection. Borrower promises and agrees to pay all costs of collection (including reasonable attorneys' fees) incurred or paid by Lender in enforcing this Note upon the occurrence of any Event of Default, whether or not suit is actually filed. All such costs, expenses and fees shall become immediately due and payable and shall bear interest at the Default Rate when paid or incurred by Lender.

3.4 Waivers, Consents, Etc. Borrower (a) waives and renounces any and all redemption and exemption rights and the benefit of all valuation and appraisal privileges against the indebtedness evidenced by this Note or by any extension or renewal hereof; (b) waives presentment and demand for payment, notices

UNOFFICIAL COPY

of nonpayment and of dishonor, protest of dishonor, and notice of protest; (c) waives all notices in connection with the delivery and acceptance hereof; (d) waives any and all lack of diligence and delays in the enforcement of the payment hereof; (e) consents to any and all extensions of time, renewals, waivers, or modifications that may be granted by Lender with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; and (f) consents to the addition of any and all other makers, endorsers, guarantors, and other obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agrees that the addition of any such obligors or security shall not affect the liability of Borrower or any guarantor for the payment hereof.

3.5 Extensions. Except as herein provided, Borrower agrees that the time of payment of the Principal Balance or any accrued interest thereon or any part thereof may be extended from time to time without modifying or releasing the Mortgage or other Loan Documents or the liability of Borrower, any guarantor of the Loan or any other such parties, the right of recourse against Borrower, any guarantor of the Loan and such parties being hereby reserved by Lender.

3.6 Governing Law/Venue. This Note shall be governed by and construed in accordance with the laws of the State of Illinois. Venue for all disputes and claims may, at the sole election of Lender, be in the Circuit Court of Cook County, Illinois.

3.7 Waiver of Trial by Jury. **THE UNDERSIGNED WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (I) UNDER THIS NOTE OR UNDER ANY DOCUMENT SECURING THIS NOTE OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT WHICH MAY BE DELIVERED IN THE FUTURE IN CONNECTION HERewith, OR (II) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS NOTE, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.**

3.8 Names. As used herein, the term "Lender" shall also mean the subsequent holder or holders of this Note from time to time. Regardless of their form, all words shall be deemed singular or plural and shall have the gender as required by the text. If there is more than one Borrower of this Note, the liability of the undersigned shall be joint and several.

3.9 Benefit of Lender. This Note shall inure to the benefit of the Lender and its successors and assigns and shall be binding upon Borrower and its successors and assigns.

3.10 Time of Essence. Time is of the essence of this Note.

UNOFFICIAL COPY

3.11 Compliance With Applicable Law. Borrower agrees that the obligations evidenced by this Note constitute an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Section 1601, et seq. and said obligations constitute a business loan which comes within the purview of Section 4(l)(c) of "An Act in Relation to the Rule of Interest and Lending of Money," approved May 24, 1879, as amended, 815 ILCS 205/4(l)(c). The proceeds of the Loan will not be used for the purchase of registered equity securities within the purview of Regulation "G" issued by the Board of Governors of the Federal Reserve System.

3.12 Severability. If any provision of this Note is held to be void or unenforceable, such provision, at the option of Lender, shall be deemed omitted and this Note, with such provision omitted, shall remain in full force and effect.

3.13 Lawful Interest. It being the intention of Lender and Borrower to comply with the applicable laws with regard to the interest charged hereunder, it is agreed that, notwithstanding any provision to the contrary in this Note or other Loan Documents, no such provision, including without limitation any provision of this Note providing for the payment of interest or other charges, shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by this Note or by any extension or renewal hereof. If any Excess Interest is provided for, or is adjudicated to be provided for, in this Note or the other Loan Documents, then in such event:

- (a) the provisions of this paragraph shall govern and control;
- (b) Borrower shall not be obligated to pay any Excess Interest;
- (c) any Excess Interest that Lender may have received hereunder shall, at the option of Lender, be (i) applied as a credit against the Principal Balance due under this Note or accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the Borrower, or (iii) any combination of the foregoing;
- (d) the applicable interest rate or rates shall be automatically subject to reduction to the maximum lawful rate allowed to be contracted for in writing under the applicable governing usury laws, and this Note and the Loan Documents shall be deemed to have been, and shall be, reformed and modified to reflect such reduction in such interest rate or rates; and
- (e) Borrower shall not have any action or remedy against Lender for any damages whatsoever or any defense to enforcement of the Note or arising out of the payment or collection of any Excess Interest.

3.14 Notices. Any notice, demand, request or other communication desired to be given or required pursuant to the terms hereof shall be in writing and shall

UNOFFICIAL COPY

be delivered by personal service or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows or to such other address as the parties hereto may designate in writing from time to time:

Lender: COLE TAYLOR BANK
5501 West 79th Street
Burbank, Illinois 60459
Attention: Real Estate Department

Borrower: LaSalle Bank National Association, as successor to
American National Bank and Trust Company of Chicago,
as Trustee under Trust No. 109086-06
33 North LaSalle Street
Chicago, Illinois 60602

Any such notice, demand, request or other communication shall be deemed given when personally delivered or if mailed three days after deposit in the mail.

3.15 Headings. The various headings used in this Note as headings for sections or otherwise are for convenience and reference only and shall not be used in interpreting the text of the section in which they appear and shall not limit or otherwise affect the meanings thereof.

4.1 Exculpation. This Note is executed by LaSalle Bank National Association, as successor to American National Bank and Trust Company of Chicago, 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 with respect to LaSalle Bank National Association, as successor to American National Bank and Trust Company of Chicago, as Trustee, is payable only out of the property specifically described in the Mortgage and the other Loan Documents securing the payment hereof, by the enforcement of the provisions contained in the Mortgage or the other Loan Documents. No personal liability shall be asserted or be enforceable against LaSalle Bank National Association, as successor to American National Bank and Trust Company of Chicago, as Trustee, because or in respect of this Note or the making, issue or transfer of this Note, all such liability with respect to LaSalle Bank National Association, as successor to American National Bank and Trust Company of Chicago, as Trustee, being expressly waived by each subsequent holder hereof. Notwithstanding the foregoing or any other limitations set forth in this Note or the Loan Documents with respect to LaSalle Bank National Association, as successor to American National Bank and Trust Company of Chicago, as Trustee, having no personal liability for the payment of this Note, nothing herein contained shall modify, diminish or discharge the personal liability of Charles R. Malk hereof for the payment of this Note or the performance of his obligations as set forth in this Note and the Loan Documents. No trustee or land trust exculpation clause set forth in this Note or the Loan Documents shall have any applicability to Charles R. Malk, who shall remain personally obligated to pay this Note and perform all of his obligations as set forth in this Note and the Loan Documents. With respect to LaSalle

UNOFFICIAL COPY

Bank National Association, as successor to American National Bank and Trust Company of Chicago, as Trustee, only, each original and successive holder of this Note accepts the same upon the express condition that no duty shall rest upon LaSalle Bank National Association, as successor to American National Bank and Trust Company of Chicago, as Trustee, to sequester the rents, issues and profits arising from the property described in said Mortgage, or the proceeds arising from the sale or other disposition hereof.

5.1 Incorporation by Reference. To the extent not inconsistent with the terms of this Note, the terms of the Loan Documents are incorporated herein and made a part hereof by reference.

IN WITNESS WHEREOF, Borrower has caused this Note to be executed and attested by its duly authorized representatives.

LA SALLE BANK NATIONAL ASSOCIATION,
as successor to AMERICAN NATIONAL BANK
AND TRUST COMPANY OF CHICAGO, not
personally, but as Trustee under a Trust
Agreement dated August 1, 1989, and known
as Trust No. 109086-06

By: _____

Its:

By: _____

Its:

UNOFFICIAL COPY

EXHIBIT C

REAFFIRMATION OF GUARANTY

This Reaffirmation of Guaranty is made as of this 20th day of November, 2001, by CHARLES R. MALK ("Guarantor") to and for the benefit of COLE TAYLOR BANK, an Illinois banking corporation ("Lender").

WITNESSETH:

A. Lender extended a credit facility to LaSalle Bank National Association, as successor to American National Bank And Trust Company Of Chicago, as Trustee under a Trust Agreement dated August 1, 1989, and known as Trust No. 109086-06 ("Borrower") in the original principal amount of One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00).

B. In connection with the credit facility referred to in Recital A, Borrower executed and delivered to Lender a Note (the "Original Note") dated as of November 15, 1999, in the original principal amount of One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00).

C. The Loan as evidenced by the Original Note is secured by (i) a Mortgage (the "Mortgage") dated as of November 15, 1999, executed by Borrower in favor of Lender, encumbering the property legally described on attached Exhibit A (the "Premises"), which Mortgage was recorded with the Recorder of Deeds for Cook County, Illinois on November 30, 1999, as Document No. 09116864; (ii) a Collateral Assignment of Rents and Leases ("Assignment of Rents") dated as of November 15, 1999, executed by Borrower in favor of Lender encumbering the Premises, which Assignment of Rents were recorded with the Recorder of Deeds for Cook County, Illinois on November 30, 1999, as Document No. 09116865; (iii) a Security Agreement and Collateral Assignment of Beneficial Interest in Land Trust (the "CABI") dated as of November 15, 1999, executed by 1500 North Kingsbury General Partnership, an Illinois general partnership ("Beneficiary"), in favor of Lender, which collaterally assigns 100% of the beneficial interest in and to Borrower to Lender; (iv) an Environmental Indemnity Agreement dated as of November 15, 1999, executed by Charles R. Malk in favor of Lender; (v) UCC-1 and UCC-2 Financing Statements executed by Borrower; and (vi) such other collateral documents delivered in connection with the Original Note.

D. The Loan was guaranteed pursuant to an Absolute and Unconditional Guaranty dated as of November 15, 1999, executed by Guarantor to and for the benefit of Lender (the "Guaranty").

E. Pursuant to an Amendment to Mortgage and Loan Documents (the "First Amendment") dated as of August 15, 2000, by and between Borrower, Guarantor and Lender, which was recorded with the Recorder of Deeds for Cook County, Illinois on August 24, 2000, as Document No. 00656722, the parties amended the Loan

UNOFFICIAL COPY

Documents to provide for, among other things, (i) an increase in the amount of the Loan from One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00) to One Million Nine Hundred Fifty Thousand and No/100 Dollars (\$1,950,000.00) with the increase in the Loan to be used for the purposes set forth in the First Amendment and (ii) an increase in the Loan Rate to eight and 67/100 percent (8.67%) per annum.

F. In connection with the First Amendment, Borrower executed and delivered to Lender an Amended and Restated Note (the "Existing Note") dated as of August 15, 2000, in the original principal amount of One Million Nine Hundred Fifty Thousand and No/100 Dollars (\$1,950,000.00) and a Reaffirmation of Guaranty dated as of August 15, 2000, executed by Guarantor to and for the benefit of Lender. Concurrent with the execution of the First Amendment, Guarantor became the owner of 100% of the beneficial interest in and power of direction in Borrower.

The documents set forth in Recitals A - F above, together with any amendments, modifications, extensions or renewals thereof, are hereinafter individually and collectively referred to as the "Loan Documents". All capitalized terms used herein shall have the same meaning as such terms are used in the Loan Documents.

G. As of the date hereof, the outstanding principal balance and accrued interest of the Loan is \$1,911,609.85.

H. Pursuant to an Amended and Restated Note (the "Amended and Restated Note") dated as of November 20, 2001, executed by Borrower payable to the order of Lender in the original principal amount of One Million Nine Hundred Eleven Thousand Six Hundred Nine and 85/100 Dollars (\$1,911,609.85) and a Second Amendment to Mortgage and Loan Documents (the "Second Amendment") dated as of November 20, 2001, by and among Borrower, Guarantor and Lender, such parties have agreed, among other things, to (i) extend the stated maturity date of the Loan from November 30, 2002, to April 1, 2005 and (ii) reduce the Loan Rate commencing November 20, 2001, to seven and 75/100 percent (7.75%) per annum as provided in the Amended and Restated Note and the Second Amendment.

NOW, THEREFORE, in consideration of the foregoing recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantors agree as follows:

1. Guarantor hereby consents to (a) Lender (i) extending the stated maturity date of the Loan from November 30, 2002, to April 1, 2005 and (ii) reducing the Loan Rate commencing November 20, 2001, to seven and 75/100 percent (7.75%) per annum as provided in the Amended and Restated Note and the Second Amendment and (b) the execution by Borrower of the Amended and Restated Note and the Second Amendment and all of the terms and conditions of such documents. All references in the Guaranty to the Existing Note shall be deemed hereafter to refer to the Amended and Restated Note dated as of November 20, 2001, in the original principal amount of One Million Nine Hundred Eleven Thousand Six Hundred Nine and 85/100 Dollars

UNOFFICIAL COPY

(\$1,911,609.85) issued pursuant to the Second Amendment and any renewals and extensions thereof.

2. Guarantor hereby acknowledges that the Guaranty is in full force and effect in accordance with its terms as hereby reaffirmed and modified. Guarantor hereby acknowledges that his obligations, covenants and agreements under the Guaranty are not diminished, discharged or adversely affected by the Amended and Restated Note or the Second Amendment or any action or inaction taken by Lender in connection with the Loan and that the Guaranty, as hereby reaffirmed, shall apply to the Indebtedness (as defined in the Guaranty), including any Indebtedness evidenced by the Amended and Restated Note and the Second Amendment. Guarantor hereby agrees that all of his covenants, agreements, representations and warranties and liabilities and obligations as set forth in the Guaranty with respect to the Loan, are hereby incorporated by reference herein and reaffirmed and apply to the Loan as modified.

3. Guarantor hereby represents and warrants that no Event of Default has occurred under the Loan Documents, including the Guaranty, and Guarantor hereby reaffirms the Guaranty and all of his obligations under the Guaranty.

IN WITNESS WHEREOF, the parties hereto have executed this Reaffirmation of Guaranty as of the day and year first above written.

CHARLES R. MALK

UNOFFICIAL COPY

STATE OF

COUNTY OF

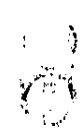
I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that CHARLES R. MALK, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 20__.

Notary Public

My Commission Expires:

Property of Cook County Clerk's Office



20079761

UNOFFICIAL COPY

EXHIBIT D

COLE TAYLOR BANK
CHARLES R. MALK
1500 NORTH KINGSBURY
CHICAGO, ILLINOIS
SECOND AMENDMENT TO LOAN

DOCUMENT CHECKLIST

1. Second Amendment to Mortgage and Loan Documents.
2. Amended and Restated Note.
3. Reaffirmation of Guaranty.
4. Certified Copy of Land Trust Agreement.
5. Certified Copy of Letter of Direction.
6. Trustee's Certification of Beneficiary.
7. Up-dated UCC, Tax Lien, Judgment and Pending Suit Searches.
8. Personal Undertaking and ALTA Statements.
9. Endorsement to Title Policy covering recording of Second Amendment.
10. Up-dated Opinion of Counsel.
11. Payment of Accrued Interest.