

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Randall S. Kulat, Esq.
MELTZER, PURTILL & STELLE, LLC
1515 East Woodfield Road
Second Floor
Schaumburg, IL 60173-5431



This space reserved for Recorder's use only

Permanent Real Estate Tax Index No.:
11-18-327-003-0000

Address:
1313-21 Oak, Evanston, Cook County, Illinois

MODIFICATION OF LOAN DOCUMENTS

Re: 1313-21 Oak, Evanston, Illinois

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 28 day of February, 2002, by and among WILLIAM B. SILVERSTEIN and THOMAS B. SILVERSTEIN (collectively, "Borrower"), and LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns, formerly known as LASALLE BANK, FSB, a federal savings bank ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Two Million Three Hundred Eighty-Five Thousand and no/100ths Dollars (\$2,385,000.00) pursuant to the terms and conditions of a Mortgage Loan Agreement dated as of August 4, 1999 between Borrower and Lender (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Mortgage Note dated August 4, 1999, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Mortgage Note").

B. The Mortgage Note is secured by, among other things, (i) that certain Mortgage and Security Agreement dated August 4, 1999 from Borrower to Lender recorded with the Recorder of Deeds in Cook, County, Illinois (the "Recorder's Office") on August 6, 1999, as Document No. 99749282 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain

782-986, 6 TC, Dd

10
10

BOX 333-CTI

UNOFFICIAL COPY

Assignment of Rents and Leases dated August 4, 1999 from Borrower to Lender and recorded in the Recorder's Office on August 6, 1999, as Document No. 99749283 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated August 4, 1999 from Borrower to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Mortgage Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. Borrower has now requested that Lender amend the Loan to, among other things, (i) extend the Maturity Date for thirty-six (36) additional months to August 4, 2005; (ii) increase the amount of the Loan by \$705,000.00 from the original amount to the amended amount of \$3,090,000.00; and (iii) provide for the Loan to bear interest, at Borrower's election, at either a floating rate or a fixed rate.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date.** The Maturity Date of the Loan is hereby extended to August 4, 2005, or such earlier date when all indebtedness under the Loan shall be due and payable. Any reference in the Loan Agreement or any other Loan Document to the Maturity Date shall mean and refer to August 4, 2005.

2. **Loan Amount.** The Loan amount is hereby increased by \$705,000.00, from the original principal amount of \$2,385,000.00 to the increased amount of \$3,090,000.00. Any reference in the Loan Agreement or any other Loan Document to the Loan amount shall mean and refer to the amount of \$3,090,000.00.

3. **Principal and Interest.** Borrower and Lender agree that the Mortgage Note shall be amended and restated in its entirety as provided in the "**Amended and Restated Mortgage Note**", of even date herewith. Upon execution and delivery by Borrower of the Amended and Restated Mortgage Note and satisfaction of all other conditions contained herein, Lender shall cancel the original Mortgage Note and return the executed original of the Mortgage Note to Borrower. Such cancellation shall not be deemed and/or construed as a novation of the obligations of Borrower evidenced thereby, all of which shall remain in full force and effect as provided in the Amended and Restated Mortgage Note. From and after the date hereof and execution and delivery of the Amended and Restated Mortgage Note by Borrower, all references in the Loan Agreement and the Loan Documents to the Mortgage Note shall be deemed references to the Amended and Restated Mortgage Note, and all references in the Loan Agreement and in the Loan Documents to the Loan shall be deemed references to the Loan evidenced by the Amended and Restated Mortgage Note.

UNOFFICIAL COPY

4. Amendment of Loan Agreement.

(a) Loan Rate. Section 3.2 of the Loan Agreement is hereby deleted in its entirety and the following shall replace such Section 3.2:

“3.2 Loan Rate. The principal amount of the Loan outstanding from time to time shall bear interest commencing on the date of the Amended and Restated Mortgage Note and continuing thereafter through and including the Maturity Date at the rate or rates set forth in the Amended and Restated Mortgage Note (“Loan Rate”).”

(b) Debt Service Coverage. Section 5 of the Loan Agreement is hereby deleted in its entirety and the following shall replace such Section 5:

“5. DEBT SERVICE COVERAGE. During any calendar year ending December 31 (a “Year”), Borrower shall not permit the ratio of Operating Cash Flow (as defined below) during such Year to Debt Service (as defined below) during such Year to be less than 1.25 to 1.00 (“Debt Service Ratio”). As used herein, “Operating Cash Flow” shall mean for any period all rental income (including minimum rent, additional rent, escalation and pass through payments) actually received by Borrower during such period arising from the ownership and operation of the Building (excluding tenant security deposits, percentage rents and rent paid during such period by any tenant for more than three months of rental obligations) less the sum of all costs, taxes, expenses and disbursements of every kind, nature or description actually paid or due and payable during such period in connection with the leasing, management, operation, maintenance and repair of the Building and of the personal property, fixtures, machinery, equipment, systems and apparatus located therein or used in connection therewith, but excluding (i) non-cash expenses, such as depreciation and amortization costs, (ii) state and federal income taxes, (iii) the non-current portion of capital expenditures determined in accordance with generally accepted accounting principles, (iv) debt service payable on the Loan, and (v) principal and interest payments on other loans expressly permitted by Lender. In determining Operating Cash Flow, (a) extraordinary items of income, such as those resulting from casualty or condemnation or lease termination payments of tenants, shall be deducted from income and (b) real estate taxes and insurance premiums shall be treated as expenses to the extent of an annual amount based upon the amount of the most recent bill for real estate taxes and insurance premiums (regardless of whether the same shall have been paid or have become due and payable during such Year).

As used herein, “Debt Service” for any Year shall equal the sum of all principal and interest payments on the Loan and any other indebtedness of Borrower related to the Building that is due and payable during such Year. Operating Cash Flow and Debt Service shall be calculated by Lender based on the financial information provided to Lender by Borrower and independently verified by Lender and the calculations so verified shall be final and binding upon Borrower and Lender.

UNOFFICIAL COPY

If at any time during any Year Lender reasonably believes that an event has occurred which will cause a decrease in the Operating Cash Flow during such Year (including, without limitation, an increase in the real estate taxes due to an increase in the assessed valuation of the Property, the applicable tax rate or otherwise) and, as a result thereof, the ratio of Operating Cash Flow to Debt Service during such Year (or any Year thereafter) shall be less than 1.25 to 1.00, then the Loan amount shall be decreased to an amount such that the new principal balance of the Loan at the prevailing rate and remaining amortization would produce a Debt Service Ratio of 1.25 to 1.00.”

(c) Repayment and Amortization. Section 6.1 of the Loan Agreement is hereby deleted in its entirety and the following shall replace such Section 6.1:

“6.1 Repayment and Amortization. The Loan shall be repaid in monthly installments of principal and interest as set forth in the Amended and Restated Mortgage Note, with a balloon payment of all amounts due under the Loan Documents on the Maturity Date.”

(d) Operating Reports/Financial Statements. Section 8.9 of the Loan Agreement is hereby deleted in its entirety and the following shall replace such Section 8.9:

“8.9 Operating Reports/Financial Statements. Borrower shall annually deliver or cause to be delivered to Lender a detailed annual certified Operating Statement for the Building, and the rent roll for the Building and tax returns relating to the Building. Borrower shall also annually deliver or cause to be delivered to Lender certain unaudited personal financial statements and Federal income tax returns. If Borrower fails to deliver or cause to be delivered the certified annual Operating Statement and all other financial statements required to be delivered, within ten (10) days of date the date on which such statements are due, Borrower shall pay to Lender a penalty of \$500.00, provided, however, that payment of such penalty shall not relieve Borrower of its obligations under this Section 8.9 to provide such financial information.”

5. Representations and Warranties of Borrower. Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Mortgage Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Mortgage Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding

UNOFFICIAL COPY

obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

6. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 1401 007822986 (the "**Title Policy**"), as of the date this Agreement is recorded, reflecting the increase in the Loan amount, the extension of the Maturity Date and the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

7. **Additional Requirements.** The obligations of Lender to amend the Loan shall be subject to Borrower and others having delivered, or having caused to be delivered, to Lender, the following items, all of which shall be in form and substance acceptable to Lender:

- (a) This Amendment, executed by all parties;
- (c) The Amended and Restated Mortgage Note executed by Borrower;
- (c) Payment to Lender of the modification fee in the amount of \$27,038.00;
- (d) If Borrower has elected the floating rate, as set forth in the Amended and Restated Note, payment to Lender of the conversion option fee in the amount of \$3,862.00;
- (e) Updated appraisal of the Property, directed to Lender, evidencing a stabilized value of the Property not to exceed not more than eighty percent (80%);
- (f) Updated personal financial statements from Borrower; and
- (g) Such other documents as Lender may reasonably require.

UNOFFICIAL COPY

8. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

9. **Miscellaneous.**

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

(b) This Agreement shall not be construed more strictly against Lender than against Borrower merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Amended and Restated Mortgage Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders.

20259964

UNOFFICIAL COPY

Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

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

LENDER:

LASALLE BANK NATIONAL
ASSOCIATION

By: _____
Name: Jerry Smutko
Title: Sr. Vice President

BORROWER:

WILLIAM B. SILVERSTEIN

THOMAS B. SILVERSTEIN

F:\Clients\15559\053-1313-21 Oak, Evanston\Amendment\Modification of Loan Documents.doc

UNOFFICIAL COPY

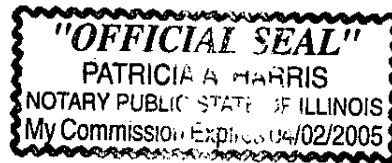
STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I Patricia A Harris, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jerry Smulik, Sn Vice President of LaSalle Bank National Association, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28 day of February, 2002.

Patricia A Harris
Notary Public

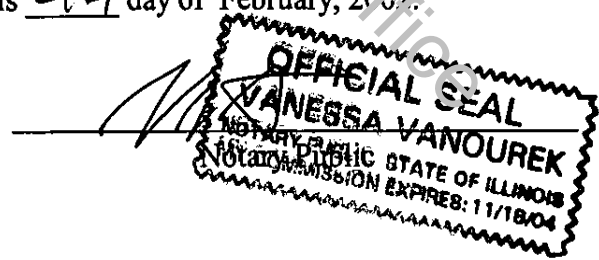
My Commission Expires: 4/2/05



STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I VANESSA VANOUREK, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that William B. Silverstein is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26th day of February, 2002.



My Commission Expires: 11/18/04


20259964

UNOFFICIAL COPY

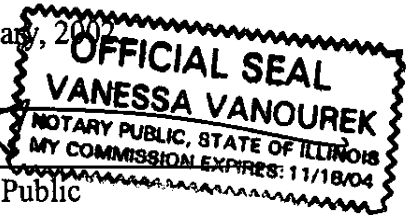
STATE OF ILLINOIS)
).ss
COUNTY OF COOK)

I VANESSA VANOUREK, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Thomas B. Silverstein is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21st day of February, 2007



Notary Public



My Commission Expires: 11/18/04

Property of Cook County Clerk's Office

20259964

UNOFFICIAL COPY

EXHIBIT A

THE PROPERTY

THE SOUTH 111 FEET OF THE NORTH 311 FEET OF THE WEST 200 FEET OF BLOCK 42 IN EVANSTON IN SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1313-21 OAK, EVANSTON, ILLINOIS

P.I.N.: 11-18-327-003-0000

Property of Cook County Clerk's Office

20259964