

# UNOFFICIAL COPY

This instrument was prepared by, and after recordation should be returned to,  
**CORUS BANK, N.A.**  
3959 N. Lincoln Avenue  
Chicago, IL 60613  
Attn: Peter R. Freund, Vice President

0020974207

1490/0195 18 001 Page 1 of 14  
2002-09-05 11:31:30  
Cook County Recorder 50.00



102  
7660464 D2569

Property of Cook County Clerk's Office

## FIRST TRANCHE A NOTE AND MORTGAGE MODIFICATION AGREEMENT

This First Tranche A Note and Mortgage and Modification Agreement (the "Modification Agreement" or "Agreement") made this 30<sup>th</sup> day of August, 2002 (the "Date Hereof") and shall be effective as of July 1, 2002 (the "Effective Date"), by and between **Cole Taylor Bank**, as successor to Corus Bank, N.A., not personally, but as Trustee under Trust Agreement dated April 18, 1997 and known as Trust No. 4269 ("Trustee"), and **Van Buren Associates**, an Illinois general partnership ("Van Buren" and, together with the Trustee, the "Borrower"), and **CORUS BANK, N.A.** (the "Lender").

14  
D

WHEREAS, the Lender is the owner and holder of a certain Promissory Note dated July 1, 1997 (the "Tranche A Note"), in the original principal sum of Two Million and No/100 Dollars (\$2,000,000) (the "Tranche A Loan") from Borrower payable to the order of Lender; and

WHEREAS, the Tranche A Loan is secured inter alia by the Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement on the real property described in **Exhibit "A"** hereto (the "Premises") from the Borrower to Lender, dated July 1, 1997, and filed in the Cook County Recorder's Office on July 3, 1997 as Document No. 97482077 and the Assignment of Rents and Leases dated July 1, 1997 and filed in the Cook County Recorder's Office on July 3, 1997 as Document No. 97482078 (collectively, the "Senior

**BOX 333-CT**

# UNOFFICIAL COPY

Mortgage" and, together with the Tranche A Note and all other documents executed contemporaneously with the Tranche A Note and Senior Mortgage, hereinafter referred to as the "Loan Documents"); and

WHEREAS, contemporaneously with the execution of the Tranche A Note and Senior Mortgage, Borrower executed and delivered to Lender a certain Second Promissory Note dated July 1, 1997 (the "Tranche B Note"), in the original principal sum of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000) (the "Tranche B Loan") from Borrower payable to the order of Lender, which Tranche B Note is secured inter alia by the Second Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement on the Premises from the Borrower to Lender, dated July 1, 1997, and filed in the Cook County Recorder's Office on July 3, 1997 as Document No. 97482079 (the "Second Mortgage"); and

WHEREAS, Borrower, under the terms of the Tranche A Note, is required to make principal and interest payments on the first day of each month to the order of the Lender in accordance with Section 2 of the Tranche A Note, until the Maturity Date, at which time all outstanding principal, accrued and unpaid interest, fees and costs due to Lender shall be due and payable; and

WHEREAS, said Tranche A Note is due and payable on July 1, 2002 (the "Maturity Date"), and, as of July 1, 2002, the outstanding principal balance of the Tranche A Note was \$1,780,230.50; and

WHEREAS, the Borrower and Lender have agreed to extend the Maturity Date of the Tranche A Note, modify the interest rate under the Loan, modify the required principal and interest payments due pursuant to the Tranche A Note by resetting the Amortization Term (as defined in Section 2 of the Note) under the Tranche A Note, and amend the Senior Mortgage to reflect the amended Tranche A Note, all as set forth below; and

# UNOFFICIAL COPY

WHEREAS, contemporaneously herewith, Raymond Cahnman, David Zazove, Donald W. Schaumberger, David R. Kahnweiler, Richard C. Berger and James F. DeRose, shall execute a Guarantor's Consent to Loan Modification, consenting to the modification of the Loan as provided herein, and ratifying and confirming the terms, provisions and conditions of each of their Guaranty Agreements dated July 1, 1997, to the Lender; and

WHEREAS, contemporaneously herewith, Borrower and Lender shall execute the First Tranche B Note and Mortgage Modification Agreement (the "Tranche B Modification"), modifying certain terms of the Tranche B Loan; and

WHEREAS, as a condition to Lender entering into this Modification Agreement and modifying the terms of the Loan as set forth herein, Borrower shall (i) pay to Lender an extension fee in the amount of \$ 8,901.15, which amount is equal to 0.5% of the outstanding balance of the Tranche A Note, and (ii) simultaneously herewith, execute and deliver the Tranche B Modification, and all guarantor consents related thereto.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, receipt of which is hereby acknowledged, and in further consideration of the mutual promises contained herein, Borrower and Lender agree as follows:

1. The Maturity Date of the Tranche A Note is hereby extended from July 1, 2002, to July 1, 2004. Any and all references to the Maturity Date in Loan Documents are hereby amended to mean July 1, 2004.
2. The existing text of Section 1 of the Tranche A Note, is hereby amended by adding the following thereto:

**Effective July 1, 2002 ("Conversion Date"), and continuing thereafter through the Maturity Date, provided that there is no Event of Default (as hereinafter defined) hereunder, or the existence of a condition which with the passage of time or the giving of notice would constitute an Event of Default under the terms of this Promissory Note ("Note"), the Interest Rate, per annum, shall be**

# UNOFFICIAL COPY

equal to the greater of (a) six percent (6.0%) per annum, or (b) the sum of: (i) three and one half percent (3.5%) plus (ii) the three month London Interbank Offered Rate (LIBOR) as stated in the Money Rates section of the *Wall Street Journal* or other mutually acceptable source, (the "LIBOR Index") as of the Conversion Date; provided, however, that the Interest Rate shall be automatically adjusted on the first day of each March, June, September and December following the calendar month in which the Initial Disbursement occurs ("Quarterly Adjustment Date"), until the Maturity Date or, if the Quarterly Adjustment Date falls on a non-business day, then the Interest Rate shall be adjusted based on the LIBOR Index on the first business day following the Quarterly Adjustment Date, effective retroactively to the Quarterly Adjustment Date, in either case without notice to Maker. Interest during the term of the Loan shall be payable on the basis of a year consisting of three hundred sixty (360) days and charged for the number of days actually elapsed.

3. The existing text of Section 2 of the Note is hereby amended by adding the following thereto:

Beginning with the payment due on August 1, 2002 (the "Payment Conversion Date") and continuing on the first day of each month thereafter (the "Payment Date"), principal and interest payments shall be calculated based upon the Interest Rate in effect and the principal balance outstanding on the Payment Conversion Date so that the amount of said payment shall equal an amount necessary to fully amortize the then remaining principal balance over a twenty (20) year term beginning July 1, 2002 (the "Amended Amortization Term"). Principal and interest payments shall then be adjusted on each Payment Date, at which time said payments shall be adjusted to equal the principal and interest payment necessary to fully amortize the then remaining outstanding principal balance over the remaining portion of the Amended Amortization Term at the Interest Rate then in effect, with a final payment of the entire unpaid principal balance of the Loan plus all accrued and unpaid interest, charges and fees due and payable on the Maturity Date, or the date to which the indebtedness evidenced hereby is accelerated as provided in the Loan Documents.

4. Notwithstanding anything to the contrary contained in the Tranche A Note, Borrower may prepay the Loan, in whole or in part, without incurring a prepayment charge.

5. An Event of Default (as defined in the Tranche B Note) under the Tranche B Loan, as modified by the Tranche B Modification, shall constitute an Event of Default under the Tranche A Loan, as hereby modified.

# UNOFFICIAL COPY

6. The Senior Mortgage is hereby amended to secure the Tranche A Note, as amended pursuant to this Modification Agreement.

7. Except for the Second Mortgage, Borrower represents to Lender that there is no junior mortgage or subsequent lien now outstanding against the Premises. Borrower also represents that the lien of the Senior Mortgage, as modified, is a valid first and subsisting lien on the Premises.

8. Borrower represents and warrants that the execution, delivery and performance of this Modification Agreement: (i) are within the powers of Borrower; (ii) have been duly authorized by all requisite actions; (iii) have received all necessary trust, partnership, governmental, company and corporate approval; (iv) do not violate any provision of any law, any order of any court or agency or government or any indenture, agreement or other instrument to which Borrower is a party, or by which it or any portion of the Premises is bound; and (v) are not in conflict with, nor will result in breach of, or constitute (with due notice or lapse of time) a default under any indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever, upon any of its property or assets, except as contemplated by the provisions of the Senior Mortgage. This Modification Agreement, when executed and delivered by Borrower will constitute the legal, valid and binding obligations of Borrower, in accordance with the terms herein.

9. Borrower acknowledges that it has thoroughly read and reviewed the terms and provisions of this Agreement and is familiar with them. Borrower clearly understands the terms and provisions of this Agreement and has fully and unconditionally consented to them. Borrower has had the full benefit and advice of counsel of its own selection, or the opportunity to obtain the benefit and advice of counsel of its own selection, in regard to understanding the terms,

# UNOFFICIAL COPY

meaning, and effect of this Agreement, with full knowledge, and without duress. In executing this Agreement, Borrower is not relying on any representations, written or oral, express or implied, made to Borrower by any party to the Agreement. Borrower acknowledges that the consideration received or to be received under this Agreement is actual and adequate.

10. As additional consideration for the modification of the terms of the Tranche A Note, the Senior Mortgage and the other Loan Documents, by Lender, as described above, Borrower releases and forever discharges Lender, and its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors and assigns, and all persons, firms, corporations and organizations on its behalf, from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action of whatever kind or nature which Borrower may now have or claim to have against Lender as of the Date Hereof, whether presently known or unknown, on account of or in any way affecting, concerning, arising out of, or founded on the Tranche A Note, the Senior Mortgage, each as modified by this Agreement, and the other Loan Documents. This includes, but is not limited to, all such loss or damage of any kind suffered or sustained prior to and including the Date Hereof, and arising as a consequence of the dealings between the parties. This Agreement and covenant on the part of the Borrower is contractual, and not a mere recital. The parties acknowledge and agree that no liability whatsoever is admitted on the part of any party, except Borrower's indebtedness to Lender under the Tranche A Note, the Senior Mortgage and the other Loan Documents, and that all agreements and understandings between Borrower and Lender are expressed and embodied in the Tranche A Note, the Senior Mortgage, each as modified by this Agreement, and the other Loan Documents.

11. Nothing contained in this Agreement shall in any manner impair the Tranche A Note, the Senior Mortgage, as modified, the other Loan Documents, or the first lien created, or any other documents executed by Borrower in connection with the modification, or alter, waive,



# UNOFFICIAL COPY

vary or affect any promise, agreement, covenant or condition recited in any of the foregoing documents, except as expressly provided in this Agreement, or affect or impair any rights, powers or remedies of Lender under any of the foregoing documents. Except as otherwise provided, all terms and provisions of the Tranche A Note, the Senior Mortgage, the other Loan Documents and other instruments and documents executed in connection with the Loan shall remain in full force and effect and shall be binding on the parties, their successors and assigns.

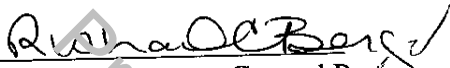
12. IN WITNESS WHEREOF, this First Tranche A Note and Mortgage Modification Agreement is executed by Cole Taylor Bank, as Successor Trustee to Corus Bank, N.A., not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in such Trustee (and Cole Taylor Bank hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in said Tranche A Note contained shall be construed as creating any liability on said Trustee or on said Cole Taylor Bank personally to pay the Tranche A Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder and that so far as said Trustee and said Cole Taylor Bank personally are concerned, the legal holder or holders of said Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the Premises conveyed by the Senior Mortgage, as hereby amended, for the payment thereof, by enforcement of the lien hereby created, in the manner herein and in said Tranche A Note provided, by action against any other security given to secure the payment of said Tranche A Note and by action to enforce the personal liability of the co-Makers or guarantors of said Tranche A Note, if any.

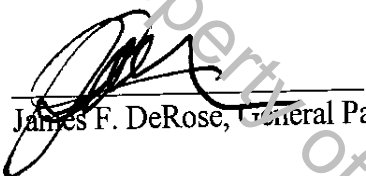
# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have executed this First Tranche A Note and Mortgage Modification Agreement as of the day and year above first written.

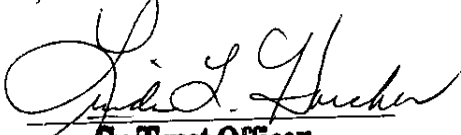
**BORROWER:**

**VAN BUREN ASSOCIATES,**  
an Illinois general partnership

By:   
Richard C. Berger, General Partner


By:   
James F. DeRose, General Partner

Cole Taylor Bank, successor trustee to  
Corus Bank, N.A., not personally but as  
Trustee under Trust Agreement dated  
April 18, 1997 and known as Trust No.  
4269

By:   
Its: Sr. Trust Officer

**LENDER:**

**CORUS BANK, N.A**

By:   
David H. Krischke,  
Commercial Loan Officer


Property of Cook County Clerk's Office





# UNOFFICIAL COPY


## GUARANTORS' CONSENT

By their signature below, Raymond Cahnman, David Zazove, Donald W. Schaumberger, David R. Kahnweiler, Richard C. Berger and James F. DeRose, as Guarantors under their respective Guaranty Agreements, each dated July 1, 1997 (the "Guaranties"), hereby consent to this First Tranche A Note and Mortgage Modification Agreement and all modifications to the Loan Documents contemplated herein, and agree that (i) they are each fully informed as to the conditions (financial and otherwise) of the Borrower and Premises, (ii) as of the Date Hereof, Guarantors have no claim against Borrower or Lender, and (iii) the Guaranty, and all terms, conditions and provisions therein, shall otherwise remain unchanged, and the same are hereby ratified and confirmed. Guarantors warrant that their respective Guaranties are valid, binding and enforceable according to their terms and there are no defenses against the enforcement of each respective Guaranty according to its terms.


  
\_\_\_\_\_  
Raymond Cahnman

  
\_\_\_\_\_  
David Zazove

  
\_\_\_\_\_  
Donald W. Schaumberger

  
\_\_\_\_\_  
David R. Kahnweiler

  
\_\_\_\_\_  
Richard C. Berger

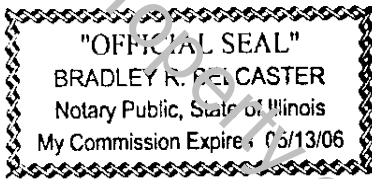
  
\_\_\_\_\_  
James F. DeRose

# UNOFFICIAL COPY

STATE OF ILLINOIS            )  
  ) ss.  
COUNTY OF Cook            )

I, Bradley R. Belcaster, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Richard C. Berger, General Partner of Van Buren Associates, an Illinois general partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such General Partner, appeared before me this day in person 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 company, on behalf of said companies, as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24<sup>th</sup> day of July, 2002.

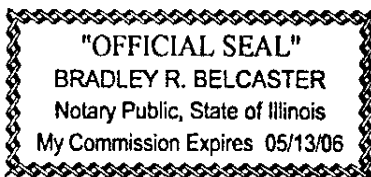


Bradley R. Belcaster  
Notary Public

STATE OF ILLINOIS            )  
  ) ss.  
COUNTY OF Cook            )

I, Bradley R. Belcaster, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that James F. DeRose, General Partner of Van Buren Associates, an Illinois general partnership, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as such General Partner, appeared before me this day in person 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 company, on behalf of said company, as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24<sup>th</sup> day of July, 2002.



Bradley R. Belcaster  
Notary Public



# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF Cook )

I, Marisa Mendez, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY, that Raymond Cahnman, 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, sealed 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 26th day of August, 2002.

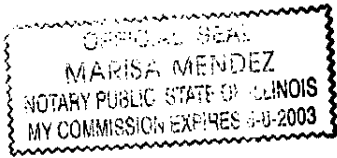


Marisa Mendez  
Notary Public

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF Cook )

I, Marisa Mendez, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY, that David Zazove, 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, sealed 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 26th day of August, 2002.

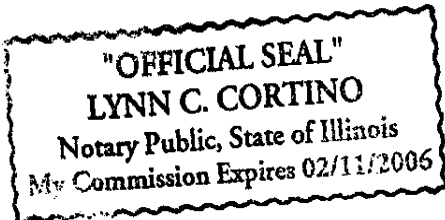


Marisa Mendez  
Notary Public

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF DuPage )

I, Lynn C. Cortino, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY, that Donald W. Schaumberger, 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, sealed 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 12 day of August, 2002.



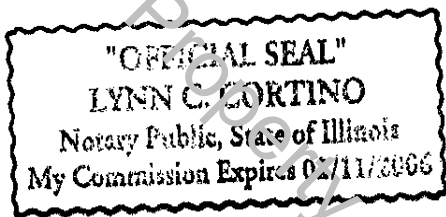
Lynn C. Cortino  
Notary Public

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
COUNTY OF DuPage ) ss.

I, Lynn Cortino, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY, that David R. Kahnweiler, 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, sealed 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 4 day of August, 2002.

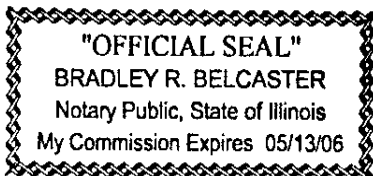


Lynn Cortino  
Notary Public

STATE OF ILLINOIS )  
COUNTY OF Cook ) ss.

I, Bradley R. Belcaster, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY, that Richard C. Berger, 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, sealed 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 24<sup>th</sup> day of July, 2007

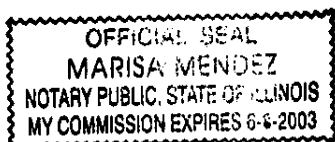


Bradley R. Belcaster  
Notary Public

STATE OF ILLINOIS )  
COUNTY OF Cook ) ss.

I, Marisa Mendez, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY, that James F. DeRose, 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, sealed 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 21<sup>st</sup> day of August, 2002.



Marisa Mendez  
Notary Public

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

PARCEL 1:

SUB-LOT 3 IN LAFLIN, LOOMIS AND CLARE'S PARTITION OF LOTS 14, 15 AND 16 AND THE SOUTHERLY 13 FEET OF LOT 13, ALL IN THOMAS H. HUBBARDS SUBDIVISION OF THE EAST 1/2 OF BLOCK 91 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, RECORDED FEBRUARY 21, 1878 AS DOCUMENT 170095

PARCEL 2:

6 FOOT PRIVATE ALLEY LYING NORTH OF AND ADJOINING SUB-LOT 3 AS SHOWN ON THE PLAT OF LAFLIN, LOOMIS AND CLARE'S PARTITION OF LOTS 14, 15 AND 16 AND THE SOUTHERLY 13 FEET OF LOT 13, ALL IN THOMAS H. HUBBARDS SUBDIVISION OF THE EAST 1/2 OF BLOCK 91 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, RECORDED FEBRUARY 21, 1878 AS DOCUMENT 170095

PARCEL 3:

NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE AGREEMENT DATED JULY 6, 1886 AND RECORDED MAY 23, 1887 AS DOCUMENT 832440 MADE BY JOHN G. SHORTALL AND OTHERS OVER THE FOLLOWING DESCRIBED LAND:

BEGINNING AT A POINT ON THE WEST LINE OF LOT 3 IN LOOMIS AND OTHERS SUBDIVISION AFORESAID 80 FEET NORTH OF THE NORTH LINE OF VAN BUREN STREET; RUNNING THENCE EAST 73 1/2 FEET TO A POINT 6 FEET SOUTH OF THE NORTH LINE OF LOT 2 AFORESAID, AND 20 FEET EAST OF THE WEST LINE THEREOF; THENCE NORTH 12 FEET TO A POINT 6 FEET SOUTH OF THE NORTH LINE OF LOT 13 AFORESAID; THENCE WEST 73 1/2 FEET TO A POINT IN THE EAST LINE OF MAIN ALLEY RUNNING NORTH AND SOUTH THROUGH THE MIDDLE OF SAID BLOCK 91, 6 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 13; THENCE SOUTH 12 FEET TO THE POINT OF BEGINNING

Common Address: 212 West Van Buren  
Chicago, Illinois

P.I.N.: 17-16-228-013-0000

20974207