

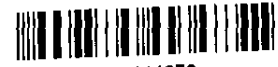
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THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

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4744/0099 55 001 Page 1 of 10
2003-01-24 08:06:25
Cook County Recorder 42.00

Cohen, Salk & Huvard, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062
Attn: Christyl Marsh, Esq.



0030111273

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ASSUMPTION AND MODIFICATION OF LOAN DOCUMENTS

THIS ASSUMPTION AND MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 21st day of October, 2002, by and among **MIDWEST TRUST SERVICES, INC.**, not personally, but solely as Trustee under Trust Agreement dated January 21, 1997 and known as Trust No. 97-1-7107 ("Borrower"), **SERGIO MARTINUCCI** ("Martinucci"), **MARTINUCCI FAMILY ENTERPRISE S, L.P.**, an Illinois limited partnership ("Partnership"), **MARTINUCCI FAMILY ENTERPRISES, L.L.C.**, an Illinois limited liability company ("Company") (Martinucci, Partnership and Company are sometimes hereinafter collectively referred to as the "Guarantor") and **LASALLE BANK NATIONAL ASSOCIATION**, formerly known as LaSalle National Bank, a national banking association, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of One Hundred Thirty Thousand and 00/100 Dollars (\$130,000.00) pursuant to the terms and conditions of a Loan and Security Agreement dated as of August 7, 1998 between Borrower, Martinucci 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 Note dated August 7, 1998, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, (i) that certain Mortgage and Security Agreement dated August 7, 1998 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on August 28, 1998, as Document No. 98770965 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and Leases dated August 7, 1998, from Borrower to Lender and recorded in the Recorder's Office on August 28, 1998, as Document No. 98770966 (the "Assignment of Leases"); (iii) that certain Collateral Assignment of Beneficial Interest and Power of Direction dated August 7, 1998 from Martinucci to Lender (the "Original Collateral Assignment"); (iv) UCC financing statement made by Borrower in favor of

BOX 333-CTA

7751881 DI-MTR-1K 3 of 3
CHICAGO TITLE

Property Clerk's Office

Lender; and (v) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Original Collateral Assignment, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended or replaced, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty dated August 7, 1998 from Martinucci to Lender (the "Martinucci Guaranty").

D. Borrower has requested that Lender consent to (i) the assignment of the beneficial interest in Borrower from Martinucci to Partnership, and (ii) the assumption of the Loan Agreement and the other Loan Documents by Partnership.

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. The current outstanding principal balance of the Note is \$121,858.07. Partnership and Company each acknowledges that it has received and reviewed copies of the Note and the Loan Documents. Partnership hereby assumes all of the indebtedness, liabilities, and obligations of Martinucci under the Loan Agreement and the other Loan Documents as if Partnership was an original maker or grantor of such documents, and covenants and agrees to pay, perform and observe all of the indebtedness, liabilities, and obligations (including, without limitation, all covenants, agreements and undertakings) of Martinucci under the Loan Agreement and the other Loan Documents.

2. Nothing contained herein shall be deemed to release or limit the liabilities of Martinucci under the Martinucci Guaranty. Martinucci hereby restates and reaffirms all terms and provisions of the Martinucci Guaranty. Martinucci does not possess any claims, defenses, offsets or counterclaims against the enforcement of the Martinucci Guaranty, and any and all such claims, defenses, offsets and counterclaims, whether known or unknown, are forever waived and released, and Martinucci is unconditionally liable under the Martinucci Guaranty for all Liabilities (as defined in the Guaranty), including the indebtedness evidenced by the Note, as amended by this Agreement. Lender hereby consents to the assignment of the beneficial interest in Borrower from Martinucci to Partnership.

3. Concurrent with the execution of this Agreement, Partnership and Company shall execute and deliver to Lender a Guaranty (the "Enterprises Guaranty"), a Collateral Assignment of Beneficial Interest and Security Agreement (the "Replacement Collateral Assignment"), a UCC1 Financing Statement and a UCC1 (Addendum) Financing Statement of even date herewith securing the Loan. Concurrent with the execution of this Agreement, Borrower and Martinucci shall each execute and deliver to Lender a UCC1 Financing Statement and a UCC1 (Addendum) Financing Statement securing the Loan. All references in the Loan Documents to the AGuarantor@ shall

hereafter be deemed to be a reference to Martinucci, Partnership and Company, collectively. All references in the Loan Documents to the "Guaranty" shall hereafter be deemed to be a reference to the Martinucci Guaranty and the Enterprises Guaranty, collectively.

4. **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 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 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 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, Guarantor 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 is validly existing under the laws of the State of its formation or organization and 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.

5. **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 007751881 (the "Title Policy"), as of the date this Agreement is recorded, reflecting 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.

6. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the

valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

7. **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.

8. **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 or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor 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 or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor 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, Guarantor 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.

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(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 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. 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.

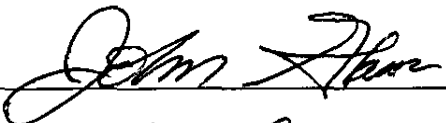
(h) Time is of the essence of each of Borrower's obligations under this Agreement.

(i) This Agreement is executed by Midwest Trust Services, Inc., not personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in said Trustee, and it is expressly understood and agreed that nothing in this Agreement shall be construed as creating any personal liability on said Trustee.

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: JOHN GLOVER
Title: AVP

BORROWER:

MIDWEST TRUST SERVICES, INC., not personally, but solely as Trustee as aforesaid

By: 
Name: **JUANITA CHANDLER**
Land Trust Officer
Title: _____

[SIGNATURES CONTINUED ON NEXT PAGE]

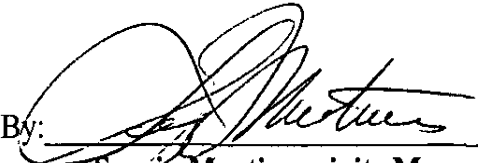
GUARANTOR:

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MARTINUCCI FAMILY ENTERPRISES,
L.P., an Illinois limited partnership

MARTINUCCI FAMILY ENTERPRISES,
L.L.C., an Illinois limited liability company

By: MARTINUCCI FAMILY
ENTERPRISES, L.L.C., an Illinois
limited liability company, its general
partner

By: 
Sergio Martinucci, its Manager

By: 
Sergio Martinucci, its Manager


SERGIO MARTINUCCI, individually

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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 Gilover, AVP 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 22 day of July, 2002.

Sandra Vargas
Notary Public

My Commission Expires: 5/20/06



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, DO CERTIFY Juanita Chandler, Land Trust Officer of MIDWEST TRUST SERVICES, INC., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Trust Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 21st day of October, 2002.

Licette Y Fernandez
Notary Public

My Commission Expires: _____



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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 SERGIO MARTINUCCI, the Manager of Martinucci Family Enterprises, L.L.C., the general partner of MARTINUCCI FAMILY ENTERPRISES, L.P., 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, and as the free and voluntary act of the limited liability company, as the general partner of the limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18 day of June, 2002.



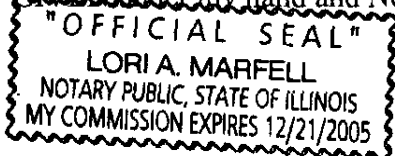
Lori A. Marfell
Notary Public

My Commission Expires: 12/21/2005

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 SERGIO MARTINUCCI, the Manager of MARTINUCCI FAMILY ENTERPRISES, L.L.C., 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, and as the free and voluntary act of the limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18 day of June, 2002.



Lori A. Marfell
Notary Public

My Commission Expires: 12/21/2005

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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 SERGIO MARTINUCCI, 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 18 day of June, 2002.



Lorie Marfell
Notary Public

My Commission Expires: 12/21/2005

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EXHIBIT A

THE PROPERTY

PIN: 13-22-200-031-0000

ADDRESS: 4323 West Irving Park Road, Chicago, Illinois

LOTS 1, 4 AND 5 (EXCEPT THE EAST $51\frac{1}{2}$ FEET THEREOF) IN BLOCK 30 IN IRVING PARK, A SUBDIVISION OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 15 AND THE NORTH $\frac{1}{2}$ OF THE NORTH EAST $\frac{1}{4}$ OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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