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2003-03-21 11:22:27

Cook County Recorder 40.00



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LHYNES # 79-38-202-01

LOAN MODIFICATION AGREEMENT

This Loan Modification Agreement ("Agreement") is made and entered into as of this 31 day of December, 2002, by and among 6300 HOWARD L.L.C., an Illinois limited liability company ("Borrower"), JOHN M. DALEY ("Daley"), JOSEPH S. BEALE ("Beale"), GERALD LEE NUDO ("Nudo") and LAURENCE WEINER ("Weiner") (Daley, Beale, Nudo and Weiner are collectively "Guarantors") and National City Bank of Michigan/Illinois ("Mortgagee").

WITNESSETH:

WHEREAS, Mortgagee made a loan to Borrower in the original principal amount of FIVE MILLION ONE HUNDRED FIFTY THOUSAND DOLLARS (\$5,150,000.00) ("Loan") pursuant to a Loan Agreement dated September 28, 2001 by and between Borrower and Mortgagee ("Loan Agreement") and evidenced by a Note executed by Borrower dated September 28, 2001, in the original principal sum of FIVE MILLION ONE HUNDRED FIFTY THOUSAND DOLLARS (\$5,150,000.00) ("Note"); and

WHEREAS, the Note is secured, in part, by a Mortgage, Assignment of Leases, Rents and Income, Fixture Financing Statement and Security Agreement executed by Borrower dated September 28, 2001, and recorded on October 10, 2001, as Document Number 0010940763 in the office of the Cook County Recorder ("Mortgage") encumbering the Mortgaged Property (as defined in the Mortgage); and

WHEREAS, the Note is further secured, in part, by a Continuing Guaranty executed by Guarantors dated September 28, 2001 ("Guaranty") to and for the benefit of Mortgagee; and

WHEREAS, Borrower now desires to borrow from Mortgagee an additional TWO HUNDRED THIRTY THOUSAND DOLLARS (\$230,000.00) to increase the total principal balance of the Note to the sum of FIVE MILLION THREE HUNDRED ELEVEN THOUSAND THREE HUNDRED THIRTY-ONE AND 72/100 DOLLARS (\$5,311,331.72); and

WHEREAS, Borrower, Guarantors and Mortgagee now desire to further amend the Note, the Mortgage and the Loan Documents (as defined in the Note) in the manner hereinafter set forth.

BOX 333-CTI

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

1. **Additional Proceeds.** Provided no Default (as defined in the Note) is existing, Mortgagee agrees to loan to Borrower an additional sum equal to TWO HUNDRED THIRTY THOUSAND DOLLARS (\$230,000.00) ("Additional Loan Proceeds"), thus increasing the principal amount of the Loan as of the date hereof from FIVE MILLION EIGHTY-ONE THOUSAND THREE HUNDRED THIRTY-ONE AND 72/100 DOLLARS (\$5,081,331.72) to FIVE MILLION THREE HUNDRED ELEVEN THOUSAND THREE HUNDRED THIRTY ONE AND 72/100 DOLLARS (\$5,311,331.72). Accordingly, the principal amount of the Note is hereby increased to FIVE MILLION THREE HUNDRED ELEVEN THOUSAND THREE HUNDRED THIRTY-ONE AND 72/100 DOLLARS (\$5,311,331.72) and the aggregate principal amount of the Mortgage is hereby increased to FIVE MILLION THREE HUNDRED ELEVEN THOUSAND THREE HUNDRED THIRTY-ONE AND 72/100 DOLLARS (\$5,311,331.72). Borrower and Guarantors acknowledge and agree that the Loan Documents, including, without limitation, the Guaranty, are hereby modified to secure the Loan Documents as amended herein.

2. **Disbursement of Additional Loan Proceeds.** The Additional Loan Proceeds shall be used to finance tenant improvements to the Project (as defined in the Loan Agreement). At Mortgagee's election, the Additional Loan Proceeds, shall be disbursed through a construction escrow with an escrowee and pursuant to a construction escrow agreement acceptable to Mortgagee. Prior to any disbursement of the Additional Loan Proceeds, as a condition to each disbursement, Borrower shall furnish to Mortgagee the following documents:
 - (a) A Request for Advance, in a form acceptable to Mortgagee, specifying the amount of the requested disbursement;

 - (b) Sworn statements and waivers of lien covering all work for which disbursement is to be made in compliance with the requirements of Mortgagee and the construction escrowee, together with such other supporting documents which Mortgagee or the construction escrowee may require;

 - (c) Endorsement to the existing title policy to cover the amount and date of the disbursement, insuring that the Mortgage is a first priority lien on the Project, and containing a mechanics' lien interim certification to cover the amount of the Loan then disbursed;

 - (d) Copies of any governmental permits and licenses issued by the appropriate governmental authority for the improvements which are the subject matter of the disbursement; and

(e) Such other documents as Mortgagee or the construction escrowee shall reasonably require.

3. **Consultants.** Mortgagee shall have the right (but not the duty) to employ such consultants to review and approve any plans and specifications for the tenant improvements and, upon reasonable prior notice to Borrower and at reasonable times, inspect the Project from time to time to insure that the same is being equipped as herein provided and approve any elements of a request for disbursement. The fees of the foregoing consultants shall be paid by Borrower immediately upon demand from Mortgagee.
4. **Fees.** In consideration of the loan of the Additional Loan Proceeds, the Borrower shall pay to Mortgagee a non-refundable commitment fee of TWO THOUSAND THREE HUNDRED DOLLARS (\$2,300.00) ("Commitment Fee"). The unpaid balance of the Commitment Fee shall be due and payable to Mortgagee concurrently with the initial disbursement of the Additional Loan Proceeds.
5. **Additional Loan Expenses.** Borrower hereby agrees to pay all expenses, charges, costs and fees relating to this Agreement, including, without limitation, the foregoing consultants' fees and Mortgagee's reasonable attorneys' fees in connection with the negotiation and documentation of this Agreement, and all other expenses, charges, costs and fees referred to or necessitated by the terms of this Agreement (collectively, the "Additional Loan Expenses"). In the event the Additional Loan Expenses are not paid to Mortgagee within five (5) days after the written demand therefore by Mortgagee, the Additional Loan Expenses shall bear interest from the date so incurred until paid at the Default Rate (as defined in the Note).
6. **Representations and Warranties.** Borrower and Guarantors each represent and warrant to Mortgagee that: (i) each has full power and authority to execute and deliver this Agreement and to perform their respective obligations hereunder; (ii) upon the execution and delivery of this Agreement, it shall be valid, binding and enforceable upon Borrower and Guarantors in accordance with its terms; (iii) the execution and delivery of this Agreement does not and will not contravene, conflict with, violate or constitute a default under any agreement or any applicable law, rule, regulation, judgment, decree or order, or any agreement, indenture or instrument to which Borrower or Guarantors are a party, or by which any of said parties is bound; (iv) no default or event or condition which would become a default with the giving of notice and/or the passage of time, exists under the Note or any other Loan Documents, as amended by this Agreement; (v) there is not any condition, event or circumstance existing, or any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending, or to the best of Borrower's or Guarantors' knowledge threatened, affecting Borrower or Guarantors, or which could prevent them from complying with or performing their respective obligations under the Loan Documents, as amended by this Agreement, within the time limits set forth therein for such compliance or performance, and no basis or any such matter exists.

7. **Amendment.** Except as specifically modified by the terms of this Agreement, the terms and conditions of the Loan Documents shall be and remain in full force and effect and shall continue to govern the rights and obligations of the parties. Without in any way limiting the foregoing, Borrower and Guarantors hereby represent and warrant that they currently know of no defenses to the enforcement of any of the Loan Documents, as modified hereby. Borrower and Guarantors hereby restate, remake and reaffirm any and all covenants, representations and warranties contained in any of the Loan Documents, as if all such instruments had been executed as of the date hereof.


IN WITNESS WHEREOF, Borrower, Guarantors and Mortgagee have duly authorized and executed this Loan Modification Agreement as of the date first above written.

BORROWER:

6300 HOWARD L.L.C., an Illinois limited liability company


By: ELSTON HOWARD, L.L.C. an Illinois limited liability company

Its: Managing Member

By: 
JOHN M. DALEY, Member and Authorized Signatory

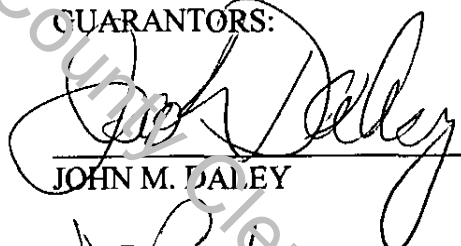
MORTGAGEE:


NATIONAL CITY BANK OF MICHIGAN/ILLINOIS

By: 
KATHERINE D. WOLKOW

Its: ASSISTANT VICE PRESIDENT

GUARANTORS:


JOHN M. DALEY


JOSEPH S. BEALE


GERALD LEE NUDO


LAURENCE WEINER

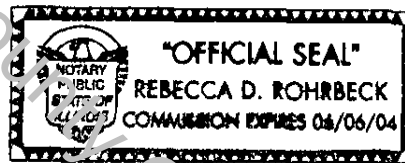
STATE OF ILLINOIS)
) ^{DuPage} SS
COUNTY OF ~~COOK~~)

I, Rebecca D. Rohrbeck, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that Katherine D. Wolkow ASSISTANT VICE PRESIDENT of National City Bank of Michigan/Illinois, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such ASSISTANT VICE PRESIDENT appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said bank the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 3 day of February, 2003

Rebecca D. Rohrbeck
NOTARY PUBLIC

My commission expires: 6/06/04



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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, CYNTHIA A. HARWARDT, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that GERALD LEE NUDO, who 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 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 20 day of December, 2002.

Cynthia A Harwardt
NOTARY PUBLIC



My commission expires: 9/10/05

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, CYNTHIA A HARWARDT, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that LAURENCE WEINER, who 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 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 20 day of December, 2002.

Cynthia A Harwardt
NOTARY PUBLIC



My commission expires: 9/10/05

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

30388882

I, Jane B. Rodak, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that JOHN M. DALEY, Member and Authorized Signatory of ELSTON HOWARD, L.L.C., an Illinois limited liability company, the Managing Member of 6300 HOWARD L.L.C., an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Member and Authorized Signatory of said Managing Member, 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 Managing Member of said Company for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 10 day of December, 2002.



Notary commission expires: 11/7/06

This instrument was prepared by and after recording return to:

Andrew M. Sachs, Esq.
ROBBINS, SALOMON & PATT, LTD.
25 East Washington Street, Suite 1000
Chicago, Illinois 60602
(312) 782-9000

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

THAT PART OF THE FOLLOWING DESCRIBED PARCELS OF LAND TAKEN AS A SINGLE TRACT; THE WEST 20 ACRES (EXCEPT THE SOUTH 40 FEET THEREOF DEDICATED FOR HOWARD STREET) OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

THE SOUTH 1/2 OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPTING THEREFROM THE NORTH 409.69 FEET THEREOF AND ALSO EXCEPTING THEREFROM THAT PART THEREOF LYING EAST OF THE EAST LINE EXTENDED NORTH, OF THE WEST 20 ACRES OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29), ALL IN COOK COUNTY, ILLINOIS; LYING SOUTH OF THE FOLLOWING DESCRIBED LINE; BEGINNING AT A POINT ON THE EAST LINE OF SAID TRACT 283.50 FEET SOUTH OF THE NORTHEAST CORNER THEREOF; THENCE WESTERLY 662.06 FEET, MORE OR LESS TO A POINT ON THE WEST LINE OF SAID TRACT 272.50 FEET SOUTH OF THE NORTHWEST CORNER THEREOF, ALL IN COOK COUNTY, ILLINOIS.

THE ABOVE DESCRIPTION MAY ALSO BE DESCRIBED AS FOLLOWS:

THAT PART OF THE WEST 20 ACRES (EXCEPT THE SOUTH 40 FEET THEREOF DEDICATED FOR HOWARD STREET) OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS LYING SOUTH OF THE FOLLOWING DESCRIBED LINE, BEGINNING AT A POINT ON THE EAST LINE OF SAID TRACT 35.15 FEET SOUTH OF THE NORTHEAST CORNER THEREOF; THENCE WESTERLY 662.02 FEET, MORE OR LESS, TO A POINT ON THE WEST LINE OF SAID TRACT, 24.32 FEET SOUTH OF THE NORTHWEST CORNER THEREOF, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT APPURTENANT OVER PART OF PARCEL 1 HEREIN AND OTHER PROPERTY, FOR THE BENEFIT OF PARCEL 1, FOR THE CONSTRUCTION, USE, RECONSTRUCTION, OPERATION, REPAIR AND MAINTENANCE OF A WATER METER VAULT AND RELATED FACILITIES THEREON; ALSO, AN EASEMENT UPON, OVER, IN, UNDER AND THROUGH AND ACROSS PART OF PARCEL 1 HEREIN, AND OTHER PROPERTY, FOR CONSTRUCTION, USE, RECONSTRUCTION, OPERATION, REPAIR AND MAINTENANCE OF A RELATED PUMP HOUSE RESERVOIR, UNDERGROUND STORAGE TANK AND RELATED FACILITIES THEREON, AS CONTAINED IN DOCUMENT 16481855.

Common address: 6300 West Howard Street, Niles, Illinois

P.I.N.: 10-29-102-018-0000