

# UNOFFICIAL COPY

PREPARED BY AND RETURN TO  
DANIEL MOTYKA  
COMERICA BANK  
8700 N. WAUKEGAN RD.  
MORTON GROVE, IL 60053

DEPT-01 RECORDING \$35.00  
T#0000 TRAN 0361 12/22/94 12:12:00  
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COOK COUNTY RECORDER

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## LOAN MODIFICATION AGREEMENT

This instrument is an Agreement among American National Bank and Trust Company of Chicago, as successor trustee to Comerica Bank-Illinois as successor to Manufacturers Affiliated Trust Company under Trust Agreement dated July 3, 1975 and known as its Trust No. 5810 ("Mortgagor"); Wayne P. Filosa and Guiseppe Marchese ("Beneficiaries"); Wayne P. Filosa and Guiseppe Marchese ("Guarantors"); and COMERICA BANK-ILLINOIS successor in interest by merger to Affiliated Bank formerly known as Affiliated Bank/Franklin Park ("Lender").

### RECITALS

A. Mortgagor is the owner of the real estate described in Exhibit "A" hereto ("Real Estate"). Beneficiaries are the sole beneficiaries of Mortgagor.

B. On July 20, 1989, Mortgagor executed and delivered to Lender its Mortgage Note ("Note") in the principal amount of \$627,000.00, to evidence a loan in that amount.

C. To secure payment of the Note, the following documents were executed and delivered:

1. A Mortgage, Assignment of Leases and Security Agreement dated July 20, 1989 and recorded on October 2, 1989 with the Recorder of Deeds of Cook County, Illinois, as Document Number 89463607, wherein the Mortgagor mortgaged the Real Estate to Lender.

2. An Assignment of Lease, Rents and Profits dated July 20, 1989 and recorded October 2, 1989 with the Recorder of Deeds of Cook County, Illinois, as Document No. 89463608, wherein Mortgagor assigned to Lender the rents and income from the Real Estate.

3. A Security Agreement dated July 20, 1989 wherein Bank is granted a security interest in certain property.

D. On January 31, 1992, Mortgagor modified the terms of the Note and executed and delivered to Lender an Amended and Restated Promissory Note in the principal amount of \$603,801.31

E. To secure payment of the Amended and Restated Note, the following documents were

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BOX 156

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1983  
893060

ATI TITLE COMPANY  
One TransAm Plaza Drive, Suite 500  
Oakbrook Terrace, IL 60181  
(708) 889-2400

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executed and delivered:

1. A Loan Modification Agreement dated January 31, 1992 and recorded July 16, 1992 with the Recorder of Deeds of Cook County, Illinois, as Document No. 92524166, wherein Mortgagor modified the original terms of the Note.

2. A Guaranty of Note and Mortgage dated January 31, 1992, wherein Guarantors guaranteed to Bank the payment of the Note and other undertakings as therein set forth.

F. A Loan Extension agreement dated September 1, 1994 and recorded October 3, 1994 with the Recorder of Deeds of Cook County, Illinois, as Document No. 94851983, wherein the Note was extended to November 1, 1994.

G. The Beneficiaries requested that the Lender extend the extend the maturity date to November 1, 1999.

WHEREFORE, Beneficiaries and Lender hereby agree to the following:

1. Extend the maturity date to November 1, 1999. Mortgagor shall deliver to lender at the execution and delivery of this agreement an Amended and Restated Note ( which is hereby incorporated by reference and attached hereto as Exhibit "B") dated as of the date hereof (the "Restated Note") payable to the order of the Lender in the principal amount of Five Hundred Seventeen Thousand Seven Hundred Eighty Six and 54/100 (\$517,786.54).

2. Except as modified in paragraph 1 above and the Restated Note, all other Loan Documents remain in full force and effect according to their terms.

3. Guarantors jointly and severally, reaffirm their guarantee of the obligation of Mortgagor to Lender under the provisions of the Note and Loan Documents.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed and delivered on November 1st, 1994.

Comerica Bank-Illinois, as successor in interest by merger to Affiliated Bank, formerly known as Affiliated Bank/Franklin Park

By: 

American National Bank, as Trustee aforesaid

By: 

Vice President

Attest

Attestation not required by American National Bank and Trust Company of Chicago By Laws

By: \_\_\_\_\_

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This instrument is executed by the undersigned Lender/Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

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Acknowledgement by Beneficiary

The undersigned hereby acknowledges and consents to the within Extension Agreement.

[Signature]  
Wayne P. Filosa

[Signature]  
Giuseppe Marchese

The undersigned hereby acknowledges and consents to the within Extension Agreement and reaffirms their Guaranty of Note and Mortgage dated January 31, 1992.

[Signature]  
Wayne P. Filosa

[Signature]  
Giuseppe Marchese

STATE OF ILLINOIS)  
                  ) SS  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that John D. Smith, Vice-President of Comerica Bank - Illinois, 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 and as the free and voluntary act of said institution, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29 day of November, 1994.

OFFICIAL SEAL  
DONNA K. GLUSZEK  
NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXP. 7/10/97

[Signature]  
Notary Public

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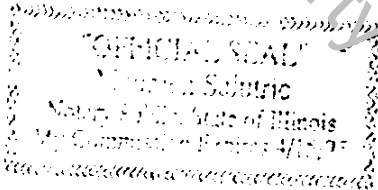
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STATE OF ILLINOIS)  
 ) SS  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Suzanne Goldstein Adver, Vice President of American National Bank, as Trustee as aforesaid, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free act of said Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of NOV 29 1994, 1994.

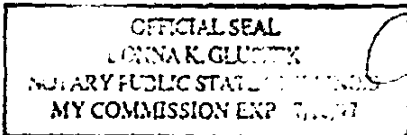


Maurice Saluta  
Notary Public

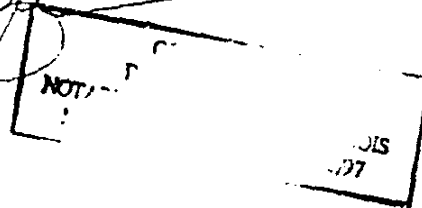
STATE OF ILLINOIS)  
 ) SS  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Wayne P. Filosa and Guiseppe Marchese personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act as beneficiaries for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26 day of November, 1994.



Donna K. Glusky  
Notary Public



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## Exhibit A

PARCEL 1: THE SOUTH 25 FEET OF LOT 10, THE SOUTH 75 FEET OF LOT 9 AND ALL OF LOTS 15, 16, 18, 22, 23, 24 AND 25 IN BLOCK 11 IN WEEK'S SUBDIVISION OF BLOCKS 1, 2 AND 3 (EXCEPT THE SOUTH 66 FEET OF SAID BLOCK 3) AND THAT PART OF BLOCKS 11, 12 AND 13 LYING WEST OF WISCONSIN CENTRAL RAILROAD AND SOUTH 476.1 FEET MORE OR LESS OF BLOCK 4 AND THAT PART OF THE SOUTH 398 FEET MORE OR LESS OF BLOCK 10 LYING WEST OF SAID RAILROAD IN RIVER PARK, A SUBDIVISION OF PART OF THE NORTH 1/2 OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 12, IN COOK COUNTY, ILLINOIS.

ALSO

PARCEL 2: LOTS 36 TO 50 INCLUSIVE IN BLOCK 11 IN WEEK'S AND OTHER'S RESUBDIVISION OF LOTS 7, 8, 26, 27, 28 AND PARTS OF LOTS 4, 5, 6, 29, 30 AND 31 IN BLOCK 11, WEST OF RAILROAD IN WEEK'S SUBDIVISION OF BLOCK 11 IN RIVER PARK IN THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE SOUTHEAST 1/4 IN THE NORTHWEST 1/4 OF SECTION 27, WEST OF RAILROAD, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 2950 COMMERCE AVENUE  
FRANKLIN PARK, ILLINOIS

PIN # 12-27-117-005, 12-27-117-006, 12-27-117-008,  
12-27-117-012, 12-27-117-013, 12-27-117-014,  
12-27-117-020, 12-27-117-022, 12-27-117-024

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EXHIBIT "B" (PAGE 1 of 3)

## Amended and Restated MORTGAGE NOTE

\$517,786.54

Franklin Park, Illinois

November 1, 1994

FOR VALUE RECEIVED, the undersigned American National Bank and Trust Company of Chicago, as successor trustee to Comerica Bank Illinois as successor to Manufacturers Affiliated Trust Company under Trust Agreement dated July 3, 1975 and known as its Trust No. 5810 ("Maker") hereby promises to pay to the order of Comerica Bank - Illinois ("Payee"), at its offices at 3044 Rose Street, Franklin Park, Illinois, 60131 or at such other place as Payee may from time to time designate, in the manner hereinafter provided, the principal sum of Five Hundred Seventeen Thousand Seven Hundred Eighty Six and 54/100 (\$517,786.54) Dollars, in lawful money of the United States of America, together with interest ("Interest Rate") from the date of disbursement on the outstanding balance from time to time as follows:

Principal monthly payments of Two Thousand Eight Hundred Sixty One and 62/100 (\$2,861.62) dollars together with interest on the principal balance from time to time unpaid at a variable rate of (3/8)% above the prime commercial rate of Payee, such rate to be changed on the day or days said prime commercial rate is changed. Payments shall be due on the 1st day of December, 1994 and on the 1st day of each month thereafter. On the 1st day of November, 1999 Maker shall immediately pay the principal balance remaining along with all accrued interest. The term "prime" means the Prime Commercial Rate of Payee, such rate being changed from time to time as established or announced by Payee. Prime does not mean the lowest interest rate offered by payee from time to time.

Interest shall be calculated hereunder on the basis of actual days in a month over a 360-day year. In the event that the unpaid principal balance of this Mortgage Note ("Note") becomes due and payable on a date other than the first day of a calendar month, a final payment of interest at the rate provided in this Note shall be due and payable on such date.

This Note is secured by a certain Mortgage, Assignment of Leases and Security Agreement of even date herewith executed by Maker ("Mortgage") which pertains to certain real estate located at 2950 Commerce Ave., Franklin Park, Cook County, Illinois, and legally described on Exhibit "2" attached to the Mortgage ("Real Estate"), and is further secured by the other Loan and Security documents ("Loan Documents") (as defined in the Mortgage) all of which documents bear even date herewith, which are made a part hereof and which are hereby incorporated by reference.

(Insert Prepayment Provision)

If Maker fails to pay any installment or payment of principal or interest or other charge due hereunder when due, or if at any time hereafter the right to foreclose or exercise the remedies available under the Mortgage or other Loan Documents or to accelerate this Note shall accrue to the Payee under any of the provisions contained in this Note, the Mortgage, or the other Loan Documents, including, without limitation, by reason of the Real Estate or any part thereof or any legal, equitable or beneficial interest therein, being sold, assigned, transferred, conveyed, mortgaged or otherwise liened or encumbered (to or in favor of any party other than Payee, or by reason of Maker or any beneficiary of Maker other than Payee, or by reason of Maker or any beneficiary of Maker entering into any contract or agreement for any of the foregoing, or if at any time hereafter any other default occurs under the Mortgage, this Note, Guaranty, if any, of this Note or any of the Loan Documents, and Maker fails to cure the same within the time period, if any, provided for curing the same under the terms of the Mortgage or other Loan Documents, then at the option and election of the Payee, and without further notice, grace or opportunity to cure, the entire unpaid principal balance outstanding hereunder, together with all interest accrued thereon, may be accelerated and become immediately due and payable at the place of payment aforesaid.

In case the right to accelerate this Note shall accrue by reason of any of the events of default referred to in the preceding paragraph, in lieu of or in addition to any other right or remedy then available under this Note or the other Loan Documents, the Payee shall have the right and option, without further notice, to implement, as of and from the date of default, the "Default Rate" (as hereinafter defined) to the entire principal balance outstanding under the Note and all accrued interest thereon. For purposes of this Note, the "Default Rate" shall be the prime rate plus six (6%) percent (P + 6). The term prime rate means the prime commercial rate of the Payee, such rate being changed from time to time as established or announced by Payee. Prime does not mean the lowest interest rate offered by Payee from time to time.

Without limiting the foregoing, the Payee shall have the option in lieu of or in addition to acceleration and/or implementing the Default Rate and/or exercising any other right or remedy, to require that Maker shall pay the Payee a late payment charge equal to five (5%) percent for each dollar of any monthly payment not received within ten (10) days of when due to partially defray the additional expenses incident to the handling and processing of past due payments. The foregoing late payment charge shall apply individually to all past due payments and shall be subject to no daily pro rata adjustment or reduction.

Time is of the essence hereof.

Maker, for itself and its successors and assigns, estates, heirs, and personal representatives, and each co-maker, endorser or guarantor, if any, of this Note, for their successors and assigns, estates, heirs, and personal representatives, hereby forever waive(s) presentment, protest and demand, notice of protest, demand, dishonor and non payment of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note and waives and renounces all rights to the benefits of any statute of limitations and any moratorium, appraisalment, exemption and homestead law now provided or which may hereby be provided by any federal or state statute or decisions, including but not limited to exemptions provided by or allowed under the Bankruptcy Code, against the enforcement and collection of the obligations evidenced by this Note, and any and all amendments, substitutions, extensions, renewals, increases and modifications hereof. Maker agrees to pay all costs and expenses of collection and enforcement of this Note when incurred, including Payee's attorneys' fees and legal and court costs, including any incurred on appeal or in connection with bankruptcy or insolvency, whether or not any lawsuit or proceeding is ever filed with respect hereto. No extensions of time of the payment of this Note or any installment hereof or any other modification,

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amendment or forbearance made by agreement with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the liability of any co-maker, endorser, guarantor or any other person with regard to this Note, either in whole or in part.

No failure on the part of Payee or any holder hereof to exercise any right or remedy hereunder, whether before or after the occurrence of a default, shall constitute a waiver thereof, and no waiver of any past default shall constitute a waiver of any future default or of any other default. No failure to accelerate the debt evidenced hereby by reason of default hereunder, or acceptance of a past due installment, or indulgence granted from time to time shall be construed to be a waiver of the right to insist upon prompt payment thereafter or to impose the Default Rate retroactively or prospectively, or to impose late payment charges, or shall be deemed to be a novation of this Note or as a restatement of the debt evidenced hereby or as a waiver of such right of acceleration or any other right, or be construed so as to preclude the exercise of any right which the Payee or any holder hereof may have, whether by the laws of the state governing this Note, by agreement, or otherwise, and none of the foregoing shall operate to release, change or affect the liability of Maker or any co-maker, endorser or guarantor of this Note, and Maker and each co-maker, endorser and guarantor hereby expressly waives the benefit of any statute or rule of law or equity which would produce a result contrary to or in conflict with the foregoing. This Note may not be modified or amended orally, but only by an agreement in writing signed by the party against whom such agreement is sought to be enforced.

The parties hereto intend and believe that each provision in this Note comports with all applicable local, state, and federal laws and judicial decisions. However, if any provision, provision, or portion of any provision in this Note is found by a court of competent jurisdiction to be in violation of any applicable local, state or federal ordinance, statute, law, or administrative or judicial decision, or public policy, and if such court would declare such portion, provision or provisions of this Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force and effect to the fullest possible extent; that they are legal, valid and enforceable, and that the remainder of this Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were severable and not contained therein, and that the rights, obligations and interest of the Maker and the holder hereof under the remainder of this Note shall continue in full force and effect.

All terms, conditions and agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to the holders hereof for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable laws. If, from any circumstances whatsoever, fulfillment of any provision hereof shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, and if under any circumstances the holder hereof shall not receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

This Note shall inure to the benefit of the Payee and its successors and assigns and shall be binding upon the undersigned and its successors and assigns. As used herein, the term "Payee" shall mean and include the successors and assigns of the identified payee and the holder or holders of this Note from time to time.

Maker acknowledges and agrees that (i) this Note and the rights and obligations of all parties hereunder shall be governed by and construed under the laws of the State of Illinois; (ii) that the obligation evidenced by this Note is an exempt transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 et. seq.; (iii) that said obligation constitutes a "business loan" which comes within the purview of Ill. Rev. Stat. ch. 17, para. 6404, Sec. 4(1)(c)(1981); and (iv) that the proceeds of the loan evidenced by this Note 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.

The obligations of the Maker of this Note shall be direct and primary, and when the context of construction of the terms of this Note so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

This Note shall be governed by and enforced in accordance with the laws of the State of Illinois.

Maker hereby irrevocably agrees and consents and submits to the jurisdiction of any court of general jurisdiction in the State of Illinois, but further agrees that any litigation, actions or proceedings will be litigated at the Payee's sole discretion and election only in courts having situs within the City of Chicago, State of Illinois, in any United States District Court located within the State of Illinois including the United States District Court for the Northern District of Illinois, Eastern Division, if such court shall have jurisdiction over the subject matter, with respect to any legal proceeding arising out of or related to this Note and irrevocably waives any right that may exist with respect to a jury or jury trial and right to transfer or change the venue.

BY SIGNING THIS NOTE, Maker accepts and agrees to the terms and covenants contained in this Note.

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EXHIBIT "B" (PAGE 3 OF 3)

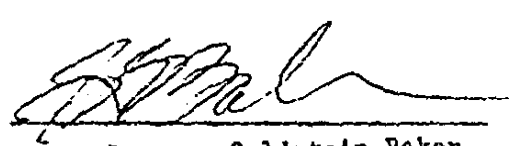
Lend Trust Maker

This Note is executed by the undersigned, 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 it is expressly understood and agreed by Payee and by every person now or hereafter holding this Note or claiming any right of security hereunder that nothing herein or in the Mortgage shall be construed as creating any liability on said Trustee personally to pay said Note or any interest that may accrue thereon, or to perform any covenants, either express or implied, herein contained, but nothing in the preceding portions of this paragraph shall limit Payee's right of recovery on this Note, the Mortgage and other Loan Documents against and out of the Real Estate and other collateral thereby conveyed by enforcement of the provisions hereof and of the Mortgage, nor in any way limit or affect the personal liability of any co-signer, endorser or guarantor of this Note and other Loan Documents.

EXECUTED AND DELIVERED at Chicago, Illinois on the 1st day of November, 1988.

American National Bank and Trust Company of Chicago, as successor trustee to Commerce Bank, which is successor to Manufacturers Affiliated Trust Company not personally, but as Trustee under trust Agreement dated July 3, 1978 and known as Trust number 5810

This instrument is executed by the undersigned Lend Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the covenants, indorsements, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or which may ever be asserted or enforceable against the Trustee on account of any agency, indorsement, representation, covenant, undertaking or agreement of the Trustee in this instrument.



Suzanne Goldstein Bakor

by: Name: \_\_\_\_\_

Vice President

Title: \_\_\_\_\_

ATTEST ISEALI

Attestation not required by American National Bank and Trust Company of Chicago By Laws

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PROPRIETARY COOK County Clerk's Office

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