

Subject Property:

3800-02 W. Irving Park Road/
4004-10 N. Hamlin,
Chicago, Illinois

PIN: 13-14-329-031



Doc#: 0422905015
Eugene "Gene" Moore Fee: \$46.00
Cook County Recorder of Deeds
Date: 08/16/2004 10:10 AM Pg: 1 of 12

This Document Prepared by and
AFTER RECORDING RETURN TO:

John J. Turner, Esq.
527 South Wells Street, Suite 800
Chicago, Illinois 60607
(312) 987-1900

7996253@cc - mep D1

TRANSFER, ASSUMPTION AND MODIFICATION AGREEMENT

THIS TRANSFER, ASSUMPTION AND MODIFICATION AGREEMENT ("Agreement") is made as of July 30, 2004, by and among LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns (the "Lender"), and the following parties, collectively referred to hereinafter as the "Transfer Parties":

CHICAGO TITLE LAND TRUST COMPANY, not personally but as Trustee (the "Trustee") under Trust Agreement No. 1109206 dated November 20, 2002 (the "Trust"); MARK B. WEISS (the "Principal", collectively with the Trustee, the "Borrowers"); and IRVING-HAMLIN LLC, an Illinois limited liability company (the "Company", collectively with the Principal, the "Obligors").

Recitals

A. The Borrowers are indebted to the Lender under a 5-year term loan extended to them on or about May 10, 2002 in the original principal amount of \$620,000.00 (the "Loan"), evidenced or secured by the following documents (collectively, the "Loan Documents"), each dated said date and payable to the order of or made in favor of the Lender: (i) the Borrowers' joint and several Promissory Note in said principal amount (the "Note"); (ii) the Trustee's Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the "Mortgage") and (iii) its Assignment of Rents and Leases (the "Rent Assignment"), each recorded with the Cook County Recorder of Deeds on May 29, 2002 as Document Nos. 0020602069 and 0020602070, respectively, covering the "Mortgaged Premises" as that term is used and defined in the Mortgage, including without limitation the real property and all improvements thereon and fixtures therein located at and commonly known as 3800-02 W. Irving Park Road/4004-10 N. Hamlin, Chicago, Illinois, legally described in attached Exhibit A, together with all tangible and intangible personalty related or belonging thereto, or arising from the leasing thereof and the business and operations conducted

UNOFFICIAL COPY

LBN - Weiss/Irving-Hamlin vF

thereon; (iii) the Principal's Assignment of Beneficial Interest pertaining to its ownership of the entire beneficial interest under Trust (the "ABI"); (iv) the Principal's Environmental Indemnity Agreement (the "Indemnity"); and (v) Illinois Uniform Commercial Code ("UCC") Financing Statement(s).

B. The Trustee owns and holds legal and equitable title to the Mortgaged Premises, and, pursuant to the Trust and the ABI, the Principal holds the power of direction to deal with such title, and to manage and control the Mortgaged Premises and to receive rentals therefrom and proceeds thereof. As provided in the Company's Operating Agreement, the Principal is its sole manager and the Principal's affiliate Egel-Weiss LP, an Illinois limited partnership (the "Member"), is its sole member.

C. The Transfer Parties have requested the Lender's consent to a transfer transaction (the "Transfer") whereby (a) the Borrowers' respective right, title and interest in and to the Mortgaged Premises are transferred and conveyed to the Company by means of a deed of conveyance from the Trustee (the "Trustee's Deed") and appropriate bills of sale/assignments from the Principal ("Bill of Sale"), and (b) the Company assumes and agrees to pay Trustee's (but not the Principal's) obligations under the Note, Mortgage and other Loan Documents, which request the Lender is willing to grant, upon and subject to the following terms and conditions:

THEREFORE, upon good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Agreements

1. **Recitals; Loan Documents.** The foregoing Recitals are hereby restated, and the Loan Documents are hereby incorporated herein by reference.
2. **Transfer.** The Lender hereby consents to the Transfer and agrees that the same shall not be deemed a Prohibited Transfer as that term is used and defined in the Mortgage, it being understood that such consent shall be not be deemed to waive or render unnecessary the Lender's consent for any subsequent transfer.
3. **Substitution of the Company for the Trustee** The Company shall be deemed to be in substitution and replacement of the Trustee under the Loan Documents. The word "Mortgagor" as used and defined in the Mortgage or any of the other Loan Documents, the word "Assignor" as used and defined in the Rent Assignment and the word "Trust 1109206" as used and defined in the Note shall be deemed to mean the Company; the word "Borrowers" as used and defined in the Note shall be deemed to mean the Company jointly and severally with the Principal; the Trustee shall, accordingly, be no longer deemed a party under or to any of the Loan Documents, and all "exculpatory" provisions shall be deemed deleted therefrom.
4. **Company's Personal Liability.** The Company hereby personally assumes, agrees to be bound by and to pay and perform all of the covenants, agreements, obligations and indebtedness in the Mortgage, Note and other Loan Documents to be paid and performed by the Trustee therein, in the same manner and as though said documents had originally been executed and

UNOFFICIAL COPY

L.BNA – Weiss/Irving-Hamlin vF

delivered by the Company. As to the Indemnity Agreement, the Company shall be deemed included therein as a joint and several co-indemnitor with the Principal.

5. Revised Provisions.

(a) The ABI shall no longer be deemed to constitute one of the Loan Documents.

(b) As to Mortgage Paragraph 14, subparagraphs ii and iii of Section a. shall be deemed deleted, and the following substituted therefor:

“ii. All or any portion of the manager interest in the Mortgagor, including such interest as held by Mark B. Weiss (the “Beneficiary”), the present Manager thereof”.

(c) With respect to the introduction to Mortgage Paragraph 15, the Company shall within 30 days after the date hereof amend its Operating Agreement so as to be in conformance with said introduction;

(d) As to Section a. of Mortgage Paragraph 16, the designation “A” shall be deemed stricken from the references therein to the Note.

(e) As to Section g of Mortgage Paragraph 16, the same shall be deemed deleted and the following substituted therefor.

“g. the dissolution, termination or merger of Mortgagor, or the occurrence of the death or declaration of legal incompetency of the Beneficiary, unless within the sixty (60) day period immediately following such death or declaration; (i) Mortgagor provides Mortgagee with a substitute for the Beneficiary whose creditworthiness and real estate experience and skills are comparable to those of the Beneficiary and who is otherwise acceptable to Mortgagee in its sole discretion, and (ii) such substituted party executes its personal undertaking in favor of Mortgagee of the Beneficiary’s indebtedness and obligations under the Loan, in form and substance satisfactory to Mortgagee;”

(f) As to Mortgage Paragraph 26, the reference therein to notice-party Avrum Reifer, Ltd., shall be deemed deleted, and the following substituted therefor:

*“Arthur H. Evans,
130 S. Jefferson Street – Suite 500
Chicago, Illinois 60661”*

(g) As to the Financing Statements, the Lender shall file such additions/amendments thereto or replacements thereof as it deems appropriate.

UNOFFICIAL COPY

LBNA – Weiss/Irving-Hamlin vF

6. **Transfer Documents.** The Principal and the Lender shall execute appropriate directions to the Trustee for its execution and delivery of the Trustee's Deed, this Agreement and any other related documentation. The Trustee's Deed and the Bill of Sale shall be in such form as the Lender may require.

7. **Modifications.** The Mortgage, the Note and each of the other Loan Documents are hereby deemed modified to the extent necessary to reflect or conform to the foregoing provisions, and, as appropriate, the following provisions.

8. **Representations and Warranties.** Each of the Transfer Parties hereby represents, covenants and warrants to the Lender that, as of the date hereof; (a) the representations and warranties in the Loan Documents are true and correct; (b) there is currently no Event of Default under the Loan Documents and such Transfer Party does not know of any event or circumstance which, with the giving of notice and/or the passage of time, would constitute such Event of Default; (c) the Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they shall constitute the legal, valid and binding obligations of the Obligors, 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 any of the Transfer Parties, or any other party whose financial statement has been delivered to the Lender in connection with the Loan or this Agreement from the date of the most recent financial statement received by Lender; (e) none of the Transfer Parties has any claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein; (f) each of the Trustee and the Company is validly existing under the laws of the State of Illinois, each of the Transfer Parties has the requisite power and authority to execute and deliver this Agreement, and each of the Obligors has the requisite power and authority to perform its respective obligations under the Loan Documents as hereby modified; (g) none of the Transfer Parties is in default under any agreement to which it is a party, the effect of which will materially and adversely affect performance by any of the Transfer Parties of their respective obligations pursuant to and as contemplated by the terms and provisions of the Loan Documents and the consummation of the transaction(s) herein and therein contemplated, and there is no action, suit, proceeding or investigation by or before any court of governmental department or public board or body, pending or threatened against, and which might materially adversely affect, the Mortgaged Premises or any of the Transfer Parties. The execution and delivery of this Agreement and performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of the Transfer Parties, and this Agreement has been duly executed and delivered by each of them.

9. **Title Policy: Closing Date.** As a condition to the agreements contained herein, and with respect to the Lender's outstanding Chicago Title Insurance Company ("CTIC") ALTA Loan Policy No. 007996253 (the "Title Policy"), the Principal shall, at its sole cost and expense, cause CTIC to issue a date down endorsement thereto (the "Endorsement"), to be dated as of the date that this Agreement (or a memorandum hereof) and the Trustee's Deed are recorded, covering and reflecting such recordings, showing the Company in title, insuring the first priority of the lien of the Mortgage subject only to the exceptions set forth in the Title Policy as of date of its issuance and any other encumbrances expressly agreed to by the Lender, and expressly continuing in effect all

UNOFFICIAL COPY

LBN/A - Weiss/Irving-Hamlin vF

prior (and, if the Lender so requires, certain additional) special endorsements. As used herein, "Closing Date", means the date upon which CTIC is prepared to issue the aforesaid Endorsement, and which must be achieved, if at all, no later than 9/31, 2004.

10. 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 the Lender than against the Transfer Parties merely by virtue of the fact that the same has been prepared by counsel for the Lender, it being recognized that the Transfer Parties have contributed substantially and materially to the preparation of this Agreement, and each of them acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering each of the parties into this Agreement. Each of the parties hereto 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 the Lender, the same shall not be deemed to constitute the Lender a venturer or partner of or in any way associated with any of the other parties hereto, nor shall privity of contract be presumed to have been established with any third party.

(d) Each of the parties hereto acknowledges that there are no other understandings, agreements or representations, 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 the parties hereto; 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) 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.

UNOFFICIAL COPY

LENA - Weiss/Irving-Hamlin vF

(g) Time is of the essence of the obligations of the Transfer Parties under this Agreement.

12. **Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act.** Each of the Transfer Parties hereby acknowledges that it has been notified by Lender that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies such Transfer Party, which information includes its name and address and such other information that will allow Lender to identify it in accordance with the Act. In addition, each Transfer Party shall (a) ensure that no person who owns a controlling interest in or otherwise controls it or any subsidiary of it is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

13. **Exculpation of the Trustee.** This Agreement is executed and delivered by the Trustee in the exercise of the authority conferred upon it as a Trustee under its Trust Agreement, and not in its individual capacity. Other than its warranty, hereby made, that it possesses full power and authority to execute and deliver this Agreement, nothing contained herein shall be construed as creating any personal liability of such Trustee in its individual capacity to pay or perform any indebtedness or obligation created, evidenced or secured by this Agreement. The foregoing exculpation shall not apply to, nor limit or affect the liability of, any party or person other than the Trustee.

14. **Counterparts** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

**(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK AND,
THE FOLLOWING PAGE IS THE SIGNATURE PAGE)**

UNOFFICIAL COPY

LBNA - Weiss/Irving-Hamlin vF

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

Lender:

Transfer Parties:

LASALLE BANK NATIONAL ASSOCIATION,

By: Don Lawler
Name: Don Lawler
Its: Loan Officer

MARK B. WEISS

IRVING-HAMLIN LLC

By: _____
Mark B. Weiss, its Manager

CHICAGO TITLE LAND TRUST COMPANY, not personally but as Trustee as aforesaid

By: _____
Name: _____
Its: _____

(Notarization Appears on the Following Page)

Property of Cook County Clerk's Office

UNOFFICIAL COPY

LBNA - Weiss/Irving-Hamlin vF

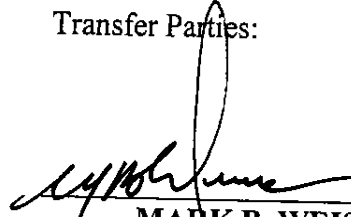
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Lender:

LASALLE BANK NATIONAL ASSOCIATION,

By: _____
Name: _____
Its: _____

Transfer Parties:



MARK B. WEISS

IRVING-HAMLIN LLC

By: 

Mark B. Weiss, its Manager

CHICAGO TITLE LAND TRUST COMPANY, not personally but as Trustee as aforesaid

SEE ATTACHED EXCULPATORY CLAUSE FOR SIGNATURE
By: _____
Name: _____
Its: _____

(Notarization Appears on the Following Page)

Property of Cook County Clerk's Office

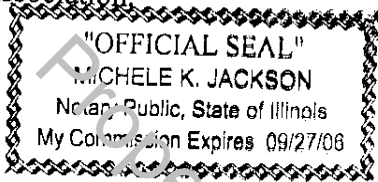
UNOFFICIAL COPY

LBNA - Weiss/Irving-Hamlin vF

STATE OF ILLINOIS
COUNTY OF COOK

Lender

The foregoing Instrument was acknowledged before me on Aug 5, 2004,
by Dan Lawler, the Loan Officer of
LASALLE BANK NATIONAL ASSOCIATION, a national banking association, on behalf of
the association.



Michele K. Jackson
NOTARY PUBLIC

Trustee

The foregoing Instrument was acknowledged before me on _____, 2004,
by _____, the _____ of
CHICAGO TITLE LAND TRUST COMPANY, an Illinois corporation, on behalf of the
corporation as Trustee.

NOTARY PUBLIC

Principal; Company

The foregoing Instrument was acknowledged before me on _____, 2004,
by **MARK B. WEISS**, individually, and, as the Manager thereof, on behalf of **IRVING-HAMLIN
LLC**, an Illinois limited liability company.

NOTARY PUBLIC

UNOFFICIAL COPY

LBNA - Weiss/Irving-Hamlin vF

STATE OF ILLINOIS
COUNTY OF COOK

Lender

The foregoing Instrument was acknowledged before me on _____, 2004,
by _____, the _____ of
LASALLE BANK NATIONAL ASSOCIATION, a national banking association, on behalf of
the association.

NOTARY PUBLIC

Trustee

The foregoing Instrument was acknowledged before me on _____, 2004,
by _____, the _____ of
CHICAGO TITLE LAND TRUST COMPANY, an Illinois corporation, on behalf of the
corporation as Trustee.

NOTARY PUBLIC

Principal; Company

The foregoing Instrument was acknowledged before me on July 30, 2004,
by **MARK B. WEISS**, individually, and, as the Manager thereof, on behalf of **IRVING-HAMLIN**
LLC, an Illinois limited liability company.



Janine T. Tarczon
NOTARY PUBLIC

UNOFFICIAL COPY

EXCULPATORY CLAUSE FOR CHICAGO TITLE LAND TRUST COMPANY, AS TRUSTEE UNDER TRUST #1109206 ATTACHED TO AND MADE A PART OF THE TRANSFER, ASSUMPTION AND MODIFICATION AGREEMENT DATED JULY 30, 2004 , TO IRVING-HAMLIN LLC .

It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against CHICAGO TITLE LAND TRUST COMPANY, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

Date: AUGUST 5, 2004

CHICAGO TITLE LAND TRUST COMPANY, as Trustee
Under Trust No. 1109206



By: *Sheila Duvent*
Assistant Vice President

State of Illinois
County of Cook SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the above named Assistant Vice President of **CHICAGO TITLE LAND TRUST COMPANY**, personally known to me to be the same persons 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 the Company; and the said Assistant Vice President then and there caused the corporate seal of said Company to be affixed to said instrument as his/her own free and voluntary act and as the free and voluntary act of the Company.

Given under my hand and Notarial Seal this 5TH day of AUGUST , 2004



Lidia Marinca
NOTARY PUBLIC

UNOFFICIAL COPY

LBNA - Weiss/Irving-Hamlin

EXHIBIT A

LEGAL DESCRIPTION

LOTS 26 AND 27 IN BLOCK 30 IN W.B. WALKER'S ADDITION TO CHICAGO IN THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 3800-02 W. Irving Park/4004-10 N. Hamlin, Chicago, Illinois

PIN: 13-14-329-031

Property of Cook County Clerk's Office