

UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING
RETURN TO:

Robert C. Aument
Daspin & Aument, LLP
210 W. 22nd Street
Suite 102
Oak Brook, Illinois
60523



Doc#: 0430812072
Eugene "Gene" Moore Fee: \$36.50
Cook County Recorder of Deeds
Date: 11/03/2004 10:57 AM Pg: 1 of 7

This space reserved for Recorder's use only

THIRD MORTGAGE MODIFICATION AGREEMENT

THIS THIRD MORTGAGE MODIFICATION AGREEMENT (this "Agreement") is made as of October 1, 2004, by and between **THEODORE C. BINZEL**, an individual resident of Illinois ("Mortgagor"), and **ASSOCIATED BANK CHICAGO**, a state banking association, its successors and assigns ("Lender").

RECITALS:

A. Pursuant to a Credit Agreement dated March 29, 2002 between Lender and Mortgagor's affiliate, Binzel Industries, Inc. (the "Company") (as amended by that certain First Loan Modification Agreement dated July 1, 2003, by that certain Second Loan Modification Agreement dated September 1, 2003, and by that certain Third Loan Modification Agreement dated November 1, 2003)), the Lender agreed to: (i) make a revolving line of credit loan to the Company of up to Two Million and 00/100 Dollars (\$2,000,000.00) as evidenced by a Revolving Credit Note dated November 1, 2003 in the principal amount of \$2,000,000.00 (the "Existing Revolving Credit Note"); (ii) make a term loan to Borrower of Five Hundred Sixty Eight Thousand Three Hundred Twenty Nine and 00/100 Dollars (\$568,329.00) as evidenced by a Term Note dated November 1, 2003 in the principal amount of \$568,329.00 (the "Existing Term Note"); (iii) make a mortgage loan to Mortgagor of One Million Four Hundred Six Thousand Two Hundred Fifty and 00/100 Dollars (\$1,406,250.00) as evidenced by a Mortgage Note dated September 1, 2003 in the principal amount of \$1,406,250.00 (the "Existing Mortgage Note"); and (iv) make a revolving line of credit loan to Borrower up to Three Hundred Thousand and 00/100 Dollars (\$300,000.00) as evidenced by a Mortgage Revolving Credit Note dated November 1, 2003 in the principal amount of \$300,000.00 (the "Existing Mortgage Revolving Credit Note") (the Existing Revolving Credit Note, the Existing Term Note, the Existing Mortgage Note and the Existing Mortgage Revolving Credit Note are sometimes referred to herein collectively as the "Existing Notes");

ST
P-7
WV
SVA

UNOFFICIAL COPY

B. The Existing Notes are secured by, among other things, that certain Mortgage, Security Agreement and Assignment of Rents and Leases dated April 26, 2002 from Mortgagor to Lender recorded with the Recorder of Deeds in Cook, County, Illinois (the "Recorder's Office") on May 2, 2002, as Document No. 0020504113 (as amended, the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property").

C. Pursuant to the terms and conditions of a certain Fourth Loan Modification Agreement of even date herewith (the "Fourth Loan Modification"), Lender has agreed to, among other things, (i) amend, substitute and replace the Existing Revolving Credit Note by accepting a Revolving Credit Note dated October 1, 2004 from the Company in the maximum principal amount of \$2,000,000.00 (the "Revolving Credit Note"); (ii) amend, substitute and replace the Existing Mortgage Note by accepting a Mortgage Note dated October 1, 2004 from the Mortgagor in the maximum principal amount of \$1,680,000.00 (the "Mortgage Note"); (iii) release the Mortgage as it relates to the collateral security interest evidenced by such Mortgage in the Existing Revolving Credit Note and the Existing Term Note; and (iv) cancel and release the Mortgagor's obligations under the Existing Mortgage Revolving Credit Note.

D. Mortgagor and Lender desire to amend the Mortgage to provide, among other things, that the Mortgage secures the obligations and liabilities of the Mortgagor under the Mortgage Note only.

E. Mortgagor will derive substantial economic benefit from the terms and provisions of the Fourth Loan Modification accepted in connection therewith, and Mortgagor's execution and delivery of this Agreement is a condition precedent to the Fourth Loan Modification.

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 enter into the Fourth Loan Modification, (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. Amendments to Mortgage.

(a) The Mortgage is hereby amended so that it secures the obligations and liabilities of the Mortgagor under the Mortgage Note.

(b) The Mortgage is hereby further amended so that any and all references in the Mortgage to Associated Bank Chicago being a "national banking association" or such other entity shall be changed to refer to Associated Bank Chicago being a state banking association.

2. Representations and Warranties of Mortgagor. Mortgagor hereby represents, covenants and warrants to Lender as follows:

UNOFFICIAL COPY

(a) The representations and warranties in the Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage, as amended) under the Existing Notes, the Mortgage Note, the Mortgage or the other Loan Documents (as defined in the Credit Agreement, as amended) and Mortgagor 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 Existing Notes, the Mortgage 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 the Company and the Mortgagor 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 Mortgagor or any other party whose financial statement has been delivered to Lender in connection with the Loan Documents.

(e) As of the date hereof, Mortgagor has no claims, counterclaims, defenses, or set-offs with respect to the Loan Documents as modified herein.

(f) This Agreement has been duly executed and delivered on behalf of Mortgagor.

3. **Expenses.** As a condition precedent to the agreements contained herein, Mortgagor 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.

4. **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 the Mortgagor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Mortgagor and Lender have contributed substantially and materially to the preparation of this Agreement, and Mortgagor 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

UNOFFICIAL COPY

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 Mortgagor nor shall privity of contract be presumed to have been established with any third party.

(d) Mortgagor 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 Mortgagor 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.

(f) Any references to the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Mortgage and the other Loan Documents as amended hereby. Any references to the "Loan Documents" contained in any of the Loan Documents shall be deemed to include, but to be limited to, this Agreement. 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 Mortgagor's obligations under this Agreement.

[signatures on next page]

UNOFFICIAL COPY

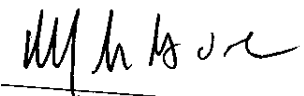
IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

MORTGAGOR:


THEODORE C. BINZEL

LENDER:

ASSOCIATED BANK CHICAGO

By: 
Name: Michael G. Donahue
Title: Executive Vice President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

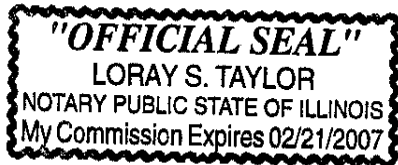
STATE OF ILLINOIS)
)
COUNTY OF Cook) ss
)

I Loray S. Taylor, a Notary Public in and for said County, in the State of aforesaid, DO HEREBY CERTIFY that Michael O'Rourke, EMP of Associated Bank Chicago, 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 1st day of October, 2004.

Loray S. Taylor
Notary Public

My Commission Expires: 2/21/2007



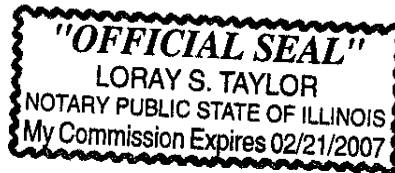
STATE OF ILLINOIS)
)
COUNTY OF Cook) ss
)

I Loray S. Taylor, a Notary Public in and for said County, in the State of aforesaid, DO HEREBY CERTIFY that Theodore C. Binzel 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 1st day of October, 2004.

Loray S. Taylor
Notary Public

My Commission Expires: 2/21/2007



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 1:

LOT 11 IN ROLLING MEADOWS INDUSTRIAL CENTER, UNIT NO. 1, A SUBDIVISION OF PART OF SECTIONS 7 AND 8, IN TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THAT PART LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT A POINT ON WEST LINE OF SAID LOT 11, WHICH POINT IS 30.00 FEET NORTH OF THE SOUTHWEST CORNER OF SAID LOT 11, MEASURED ALONG SAID WEST LINE AND RUNNING THENCE SOUTHEASTERLY IN A STRAIGHT LINE TO A POINT ON THE EASTERLY LINE OF SAID LOT 11, WHICH POINT IS 23.00 FEET NORTHERLY, MEASURED ALONG SAID EAST LINE OF THE SOUTHEAST CORNER OF SAID LOT 11, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF LOT 12 IN ROLLING MEADOWS INDUSTRIAL CENTER, UNIT NO. 1, A SUBDIVISION OF PART OF SECTIONS 7 AND 8, IN TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WESTERLY OF A LINE DESCRIBED AS:

COMMENCING AT A POINT ON THE NORTH LINE OF SAID LOT, A DISTANCE OF 101.29 FEET ARC MEASURE EASTERLY OF THE NORTHWESTERLY CORNER OF SAID LOT 12, AND THENCE RUNNING SOUTHERLY ALONG A RADIAL LINE, 300.00 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 12, A DISTANCE OF 98.73 FEET ARC MEASURE EASTERLY OF THE SOUTHWESTERLY CORNER OF SAID LOT 12, EXCEPT THAT PART OF LOT 12, LYING SOUTHERLY OF A LINE DESCRIBED AS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID LOT 12, WHICH LIES 23.00 FEET NORTHERLY, AS MEASURED ALONG SAID WEST LINE OF THE SOUTHWESTERLY CORNER OF SAID LOT 12, AND RUNNING SOUTHEASTERLY ALONG A STRAIGHT LINE TO THE POINT ON THE AFOREDESCRIBED RADIAL LINE, WHICH POINT LIES 20.00 FEET NORTHERLY, AS MEASURED ALONG SAID RADIAL LINE OF THE SOUTHERLY LINE OF SAID LOT 12, ALL IN COOK COUNTY, ILLINOIS.

Permanent Tax No.: 08-07-404-002-0000
08-07-404-005-0000

Commonly known as: 3320 Tollview Drive
Rolling Meadows, IL
60008