

UNOFFICIAL COPY

2 of 2

THIS INSTRUMENT PREPARED BY:

Bruce A. Salk
Cohen, Salk & Huvad, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062

AND AFTER RECORDING MAIL TO:

Guarantee Trust Life Insurance Company
1275 Milwaukee Avenue
Glenview, Illinois 60025
Attn: Arthur Fess



Doc#: 0503802046
Eugene "Gene" Moore Fee: \$38.00
Cook County Recorder of Deeds
Date: 02/07/2005 07:35 AM Pg: 1 of 8

481253
+1000

Property of Cook County Recorder of Deeds

ASSUMPTION AND MODIFICATION AGREEMENT

THIS ASSUMPTION AND MODIFICATION AGREEMENT (hereinafter referred to as the "Modification Agreement") made as of this 30th day of December, 2004, by and among Elston Goldstein Family Limited Partnership, an Illinois limited partnership ("Elston"), Michael Goldstein ("Guarantor") (Elston and Guarantor are hereinafter collectively referred to as the "Obligors") and Guarantee Trust Life Insurance Company ("Lender").

WITNESSETH:

WHEREAS, LaSalle Bank National Association, successor trustee to American National Bank and Trust Company of Chicago, not personally, but solely as Trustee under Trust Agreement dated October 15, 1998 and known as Trust No. 124510-01 ("Trustee") has executed and delivered to Lender that certain amended and restated mortgage note dated March 21, 2002 in the original principal sum of Six Hundred Seventy-One Thousand Four Hundred Fifty-Nine and 07/100 (\$671,459.07) Dollars (the "Original Note"), which Original Note is secured by the following documents (the following documents and any and all other instruments executed by any Obligor, as modified by that certain modification agreement dated March 21, 2002, by and among Trustee, Guarantor and Lender, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office") as Document No. 0020381081, and as amended, restated or replaced from time to time are hereinafter collectively referred to as the "Loan Documents"):

- (i) mortgage and security agreement dated December 1, 1998, recorded in the Recorder's Office, as Document No. 08138581 (the "Mortgage") on property commonly known as 3067 North Elston, Chicago, Illinois and legally described on Exhibit "A" attached hereto and made a part hereof (the "Premises");
- (ii) assignment of rents and of lessor's interest in leases dated December 1, 1998 made by Trustee and Elston in favor of Lender (the "Assignment of Rents"), recorded in the Recorder's Office as Document No. 08138582;
- (iii) collateral assignment of beneficial interest in land trust and security agreement dated of even date with the Note made by Elston in favor of Lender (the "Collateral ABI");
- (iv) guaranty dated December 1, 1998 made by Elston and Guarantor in favor of Lender; and

Bas

UNOFFICIAL COPY

- (v) environmental indemnity agreement dated December 1, 1998 made by Elston and Guarantor in favor of Lender.

WHEREAS, at the direction of the beneficiaries of the Trustee, the Trustee has conveyed the Premises to Elston; and

WHEREAS, the Obligors have requested that Lender consent to the assumption of the Original Note, the Mortgage, and Assignment of Rents by Elston; and

WHEREAS, Lender has consented to such requests, provided the parties hereto execute and deliver this Modification Agreement to Lender; and

WHEREAS, the unpaid principal balance of the Original Note is \$633,146.67, and

WHEREAS, Obligors are desirous of (i) increasing the principal sum of the Original Note to \$1,455,000.00; (ii) decreasing the interest rate of the Original Note; and (iii) extending the maturity of the Original Note to December 30, 2007, and Lender is willing to consent to such requests, subject to the terms and provisions hereinafter provided.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Mortgage held by Lender is a valid, first and subsisting lien on the Premises and that the execution of this Modification Agreement will not impair the lien of said Mortgage and that there is no existing second mortgage or other liens subsequent to the lien of the Mortgage held by Lender that will not be paid in full and released concurrently herewith or otherwise subordinated to the Mortgage, as being modified hereby, pursuant to an agreement satisfactory to the Lender (for breach of which conditions, or either of them, this Modification Agreement, at the sole election of Lender, shall not take effect and shall be void), **IT IS AGREED AS FOLLOWS:**

1. The parties represent and agree that the foregoing recitals are true and correct. All defined terms used herein and not otherwise defined shall have the meaning ascribed to such term as set forth in the Loan Documents.
2. Elston hereby assumes all of the indebtedness, liabilities, and obligations of the Trustee under the Original Note, the Mortgage and the Assignment of Rents, as if Elston 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 the Trustee under the Original Note, Mortgage and Assignment of Rents.
3. Elston shall execute and deliver to the Lender the amended and restated mortgage note described in Section 4 below.
4. The term "Note" as used in the Mortgage, the Assignment of Rents and all other Loan Documents, and hereinbelow, shall on the date hereof mean that certain Second Amended and Restated Mortgage Note dated December 30, 2004 in the principal sum of \$1,455,000.00 executed by Elston and payable to the order of Lender in successive monthly installments of principal and interest of \$10,752.30 each, commencing February 1, 2005 and continuing on the same day of each month thereafter to and including December 1, 2007, followed by a final payment on December 30, 2007 of the entire unpaid principal balance of the Note, and all accrued and unpaid interest and all other sums due thereunder, together with all extensions, renewals, modifications, amendments, refinancings and restatements thereof or thereto.

UNOFFICIAL COPY

The Loan Documents are hereby further amended to secure the obligations and liabilities evidenced by the Note. All references in the Note and the Loan Documents to the Borrower shall hereafter mean Elston.

5. Except for the modifications stated herein, the Note and Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the Note and Loan Documents and each other instrument or agreement delivered by any Obligor to or for the benefit of Lender in connection with the loan shall remain in full force and effect in accordance with their respective terms and the execution and delivery of this Modification Agreement shall not operate to waive any rights or remedies that Lender may have with respect to the Note and other Loan Documents, to forgive or waive any violation, default or breach under the Note or any other Loan Document, or to obligate Lender in any manner to make any further extensions of credit other than as expressly set forth herein.

6. Contemporaneously with the execution of this Modification Agreement by Lender, Obligors shall pay to Lender all of Lender's attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification Agreement, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees necessitated by or otherwise relating to this Modification Agreement (the "Additional Fees"). If any of the Additional Fees are not paid at the time this Modification Agreement is executed by Lender, such Additional Fees shall be paid by Obligors within five days after written demand therefor by Lender, and if not timely paid, they shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate (as defined in the Note).

7. The Premises described in the Mortgage shall remain in all events subject to the lien, charge or encumbrance of the Mortgage, or conveyance of title (if any) effected thereby, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to effect the lien, charge or encumbrance of, or warranty of title in, or conveyance effected by the Mortgage, or the priority thereof over liens, charges, encumbrances or conveyances, or, except as expressly provided herein, to release or affect the liability of any party or parties whomsoever may now or hereafter be liable under or on account of the Note and/or Mortgage, nor shall anything herein contained or done in pursuance thereof affect or be construed to affect any other security or instrument, if any, held by Lender as security for or evidence of the aforesaid indebtedness.

8. Guarantor hereby irrevocably consents to the aforesaid assumption by Elston and the modification of the Note and Loan Documents, and irrevocably agrees that his liability under the Note and the Loan Documents shall not in any way be affected, modified, or discharged in any fashion by the assumption and modification of the Note, Mortgage and Assignment of Rents contained in this Modification Agreement.

9. This Modification Agreement shall extend to and be binding upon each of the Obligors and their heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

10. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Note, the Guaranty and other Loan Documents executed by such Obligor, as hereby assumed and modified, and the liens and security interest created thereby, and acknowledge that he or it have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Note, the Guaranty and other Loan Documents executed by him or it, as so assumed and modified.

11. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois, including all matters of construction, validity and performance.

12. This Modification Agreement constitutes the entire agreement between the parties with respect to the aforesaid Modification and shall not be amended or modified in any way except by a document in writing executed by all of the parties thereto.

UNOFFICIAL COPY

13. This Modification Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

14. Lender's consent to this Modification Agreement shall be subject to Lender (or Lender's nominee) having received the following in a form and substance acceptable to Lender on or before January 31, 2005 (the "Modification Termination Date"):

(a) An endorsement to Ticor Title Insurance Loan Policy No. 444323 (commitment number 2000 00048153 STO) (the "Title Policy") which (i) amends the description of the Mortgage insured under the Title Policy to include this Modification Agreement, (ii) amends the description of the Assignment of Rents to include this Modification Agreement, (iii) extends the effective date of the Title Policy to the date of the recording of this Modification Agreement, (iv) increases the amount of the Title Policy from \$671,459.07 to \$1,455,000.00, (v) includes no additional exceptions to title other than those that have been approved in writing by Lender, (vi) states that all real estate taxes and assessments applicable to the Premises (including amounts necessary to pay all interest, penalties and charges related thereto) which are due and payable as of the date of such endorsement have been paid in full, and (vii) states that title to the Premises is vested in Elston; and

(b) Such other documents as Lender may reasonably require.

The Obligors' failure to deliver the aforementioned documents and items to Lender on or before the Modification Termination Date shall, at the option of Lender, result in this Modification Agreement (including all agreements and waivers of Lender contained herein) being null and void.

15. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

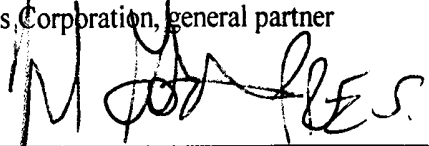
TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF OBLIGORS AND LENDER WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR THE TRANSACTION RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY OBLIGOR OR LENDER MAY FILE A COPY OF THIS EXECUTED MODIFICATION AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OBLIGOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

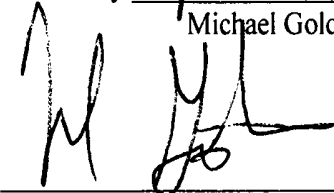
UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.


ELSTON GOLDSTEIN FAMILY LIMITED PARTNERSHIP, an Illinois limited partnership

By: Daddio Management & Investment Corp., an Illinois Corporation, general partner

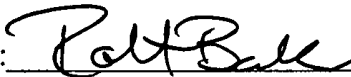
By: 
Michael Goldstein, President


MICHAEL GOLDSTEIN, individually

GUARANTEE TRUST LIFE INSURANCE COMPANY

By: 
Its: Senior Vice President

Attest:

By: 
Its: Assistant Secretary

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF ~~COOK~~ LAKE) SS

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that MICHAEL GOLDSTEIN, President of DADDIO MANAGEMENT & INVESTMENT CORP., an Illinois corporation, the general partner of ELSTON GOLDSTEIN FAMILY LIMITED PARTNERSHIP, an Illinois limited partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, on behalf of said limited partnership, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 5th day of January 2005.



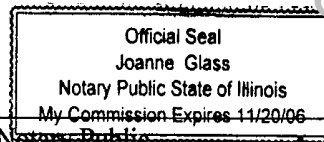
Blagomira Ianaikov
Notary Public

My Commission Expires: 4-13-08

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 Michael Goldstein, personally known to me to be the same person whose name is subscribed to the foregoing instrument, personally appeared before me this day and of his own free will, subscribed his name to the foregoing instrument for the uses and purposes therein contained.

Given under my hand and notarial seal this 11 day of January, 2005



Joanne Glass
Notary Public

My Commission Expires: 11-20-06

UNOFFICIAL COPY

EXHIBIT "A"

PIN: 13-25-209-008-0000; 13-25-209-011-0000

ADDRESS: 3067 North Elston, Chicago, Illinois

PARCEL 1:

LOTS 25, 26, 27, 28 AND 29 IN SUBDIVISION OF PART OF LOT 1 IN RICHON AND BAUERMEISTERS SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF A LINE PARALLEL TO AND 655 FEET EAST OF THE EAST LINE OF CALIFORNIA AVENUE AND SOUTH OF A LINE PARALLEL TO AND 466 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 25, IN COOK COUNTY, ILLINOIS

PARCEL 2:

LOT 2 IN J. GREENBAUM TANNINGS COMPANY'S RESUBDIVISION OF LOTS 30 TO 34 INCLUSIVE, LOTS 35 TO 46 INCLUSIVE, LOTS 57 TO 62 INCLUSIVE, LOTS 63 (EXCEPT THE NORTH 14 FEET OF SAID LOT 63) TOGETHER WITH VACATED ALLEY LYING BETWEEN SAID LOTS 37 TO 46 INCLUSIVE AND LOTS 57 TO 62 INCLUSIVE IN SUBDIVISION OF THAT PART OF LOT 1, IN RICHON AND BAUERMEISTER'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF A LINE PARALLEL TO AND 655 FEET EAST OF THE EAST LINE OF CALIFORNIA AVENUE AND SOUTH OF A LINE PARALLEL TO AND 466 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 25, RECORDED JULY 7, 1920 AS DOCUMENT NUMBER 6877636 AND AS AMENDED BY INSTRUMENT RECORDED AUGUST 4, 1920 AS DOCUMENT NUMBER 6903663 IN COOK COUNTY, ILLINOIS.