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1999-11-23 15:24:22
Cook County Recorder 51.00

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN
TO:

Lawrence M. Gritton
Katz Randall & Weinberg
333 West Wacker Drive
Suite 1800
Chicago, Illinois 60606
(312) 807-3800

KRW File No. 02441.31100

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This space reserved for Recorder.

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION (hereinafter referred to as "this Modification") is made and entered into as of the 11th day of June, 1999, by **ELLINGTON LIMITED PARTNERSHIP**, an Illinois limited partnership (hereinafter referred to as "Mortgagor"), and **DAVID B. BRINT, RICHARD J. SCIORTINO, BRINSHORE DEVELOPMENT, L.L.C., BRINT DEVELOPMENT, INC. and RJS REAL ESTATE SERVICES, INC.** (hereinafter referred to individually as a "Guarantor" and collectively as the "Guarantors"), to and for the benefit of **U.S. BANK NATIONAL ASSOCIATION** (hereinafter referred to as "Mortgagee").

RECITALS:

A. Mortgagee has heretofore made a loan (hereinafter referred to as the "Loan") to Mortgagor in the original principal amount of ONE MILLION SEVEN HUNDRED SEVENTEEN AND NO/100 (\$1,717,000.00) DOLLARS.

B. The Loan is evidenced by a Mortgage Note in said principal amount dated April 1, 1999, made by Mortgagor and payable to Mortgagee (said Mortgage Note is hereinafter referred to as the "Note").

C. The Note is secured by, among other things, a Construction Mortgage, Assignment of Rents and Security Agreement dated April 1, 1999, made by Mortgagor in favor of Mortgagee, and recorded on April 14, 1999 in the Office of the Cook County Recorder of Deeds as Document No. 99360056 (said Mortgage is hereinafter referred to as the "Mortgage"), encumbering the premises legally described in Exhibit "A" attached hereto and by this reference incorporated herein (hereinafter referred to as the "Property"). The Note is further secured by certain other documents, including but not limited to those described in Exhibit "B" attached hereto and by this reference incorporated herein (the Mortgage and all such other documents are hereinafter referred to collectively as the "Security Documents").

Box 430

D. In connection with the Loan, the Guarantors executed two certain Guaranties each dated April 1, 1999 to and for the benefit of Mortgagee (each said Guaranty is hereinafter referred to as the "Guaranty" and both said Guaranties are hereinafter collectively referred to as the "Guaranties").

E. The parties desire to further modify and amend the Note, the Security Documents and the Guaranties (hereinafter referred to collectively as the "Loan Documents") as provided herein.

F. Ellington Court L.L.C., an Illinois limited liability company, has replaced Brinshore Development, L.L.C. as the General Partner of Borrower, but not as a Guarantor, pursuant to Section 9.3(b) of the Loan Agreement, subject to Borrower complying with the documentation requirements of said Section 9.3(b).

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The aforesaid Recitals are hereby incorporated into this Modification as if fully set forth in this Paragraph 1.

2. **Amendments to Note.** The Note is hereby amended as follows, effective as of the date hereof:

(A) The principal sum of the Note is hereby increased to \$1,742,000.00;

(B) Section 1 and Paragraph (a) of Section 2 of the Note are deleted and the following are substituted in their place:

"1. **Agreement to Pay.** FOR VALUE RECEIVED, the undersigned, ELLINGTON LIMITED PARTNERSHIP, an Illinois limited partnership, hereby promises to pay to the order of U.S. BANK NATIONAL ASSOCIATION, a national banking association (hereinafter referred to as "Lender"), in the manner hereinafter provided, the principal sum of ONE MILLION SEVEN HUNDRED FORTY-TWO THOUSAND AND NO/100 (\$1,742,000.00) DOLLARS, or so much thereof as may be disbursed or advanced (or deemed disbursed or advanced) pursuant to the provisions of: (i) a certain Construction Loan Agreement dated of even date herewith between the undersigned and U.S. Bank National Association (hereinafter referred to as the "Loan Agreement"), and (ii) the provisions of Paragraph 1(b) rendered below, on or before October 1, 2000 (hereinafter referred to as the "Maturity Date"), together with interest at the applicable rate herein set forth on all sums disbursed from time to time to or for the benefit of the undersigned and remaining from time to time unpaid. This Note evidences a non-revolving acquisition and construction loan in the amount hereof.

Advances of proceeds of the Loan (hereinafter referred to as the "Loan Advances") shall be payable by the undersigned in accordance to the following provisions:

(a) Interest only at an annual rate (hereinafter referred to as the "Loan Interest Rate") equal to one (1%) percent in excess of the Reference Rate (hereinafter defined) on the balance of principal of the Loan advanced pursuant to the Loan Agreement and remaining from time to time unpaid, shall be paid monthly commencing on the first day of the first calendar month after the first Loan Advance hereunder, and on the first day of each month thereafter to and including the Maturity Date, on which date the entire principal balance of the Loan, if not sooner paid, and all accrued interest shall be due and payable.

(b) This Note also evidences the issuance by Lender of a letter of credit to the City of Chicago in the amount of \$7,700 to ensure completion of wood and wrought iron fencing around the condominium parcel (Parcel 1 of the mortgaged land) (the "**Letter of Credit #1**"), and one or more additional letters of credit to City of Chicago to ensure completion of fencing and possibly landscaping relative to the townhouse parcel (Parcel 2 of the mortgaged land) (individually or collectively "**Letter of Credit #2**") (all said Letters of Credit #1 and #2 are hereinafter referred to collectively as "**Letters of Credit**"); provided, however, that in no event shall the Letters of Credit exceed \$25,000 in the aggregate, and the outstanding principal balance hereof from time will also include the outstanding disbursements and advances pursuant to draws under the Letters of Credit ("LC Advances"). LC Advances shall be due three (3) days after the date of disbursement thereof and shall bear interest from the date of honor at an annual rate (the "**Letter of Credit Rate**") equal to four (4%) percent in excess of the Reference Rate (as hereinafter defined), on the balance of LC Advances outstanding

(c) All interest payable hereunder shall be computed for the actual number of days elapsed on the basis of a year consisting of twelve (12) 30-day months and actual days elapsed.

(d) As used herein, the term "Reference Rate" shall mean the rate determined from time to time by Lender as its Reference Rate. In determining interest payable hereon, interest shall be adjusted from time to time as and on the day changes are effected in the Reference Rate. A certificate made by an officer of Lender stating the Reference Rate in effect on any given day shall, for purposes hereof, be conclusive evidence of the Reference Rate in effect on such day. The Reference Rate is not

intended to be the lowest or most favorable rate of interest charged by Lender.

2. Application of Payments.

(a) All payments received on account of the indebtedness evidenced by this Note shall be applied to the payment of the following obligations in the order set forth: (i) to indebtedness (including accrued and unpaid interest due thereon) secured by any collateral or security agreement entered into in connection with this Note other than the principal balance evidenced hereby and the interest due thereon; (ii) to payment of late charges described in Section 5 hereof; (iii) to interest at the applicable rate specified in Sections 1(a), 1(b) and 4 hereof; and (iv) the remainder (if any) shall be applied to the principal balance remaining unpaid hereunder."

3. Amendments to Loan Agreement. The Loan Agreement is hereby amended as follows, effective as of the date hereof:

(A) The following is hereby added as new Article XII:

**"ARTICLE XII
Letters of Credit**

12.1 The Letters of Credit shall be issued within three (3) business days following receipt by Lender of a written request therefor, provided all conditions precedent thereto have been satisfied and there are no defaults under the Loan Documents. Each Letter of Credit shall expire and terminate not later than twelve (12) months after its date of issuance (the "Issuance Date").

12.2 Each Letter of Credit may be drawn upon only by the named beneficiary therein stated.

12.3 A drawing under a Letter of Credit shall be deemed a disbursement under the Note and shall accrue interest at the Letter of Credit Rate from and including the date of disbursement.

12.4 Lender may receive, accept, or pay as complying with the terms of the Letter of Credit, any drafts or other documents, otherwise in order, which may be signed by, or issued to, the administrator or executor of, or the trustee in bankruptcy or the receiver for any of the property of, the party in whose name it is provided in the Letter of Credit that any drafts or other documents should be drawn or issued.

12.5 Neither Lender nor its agents shall be under any duty to determine the proper identity of any one appearing in the draft or documents as transferee of the Letter of Credit, nor shall Lender be charged with responsibility of any nature or character for the validity or correctness of any transfer or successive transfers, and payment by Lender to any purported transferee or transferees of the Letter of Credit as determined by Lender is hereby authorized and approved, and Mortgagor further agrees to hold Lender harmless and indemnified against any liability or claim in connection with or arising out of the foregoing except as to gross negligence or wilful misconduct of Lender.

12.6 Mortgagor agrees that in the event of any extension of the maturity or time for presentation of drafts, acceptances, or documents, or any other modification of the terms of the Letters of Credit, at the request of Mortgagor, or in the event of any increase in the amount of the Letters of Credit, at Mortgagor's request, this Agreement shall be binding upon Mortgagor with regard to the Letters of Credit so increased or otherwise modified, to drafts, documents, and property covered thereby, and to any action taken by Lender or any of its correspondents in accordance with such extension, increase, or other modification.

12.7 The user of the Letters of Credit shall not be deemed Lender's agent and neither Lender nor its correspondents shall be responsible for: (i) the use which may be made of the Letters of Credit or for any acts or omissions of the user of the Letters of Credit; (ii) the validity, sufficiency, or genuineness of documents, even if such documents should in fact prove to be in any or all respects invalid, fraudulent, or forged; (iii) particular conditions stipulated in the documents or superimposed thereof; (iv) failure of any instrument to bear any reference or adequate reference to the Letters of Credit, or failure of documents to accompany any draft at negotiation, or failure of any person to note the amount of any draft on the reverse of the Letters of Credit or to surrender or take up the Letters of Credit or to send forward documents apart from drafts as may be required by the terms of the Letters of Credit, each of which provisions, if contained in the Letters of Credit itself, it is agreed may be waived by Lender; and (v) errors, omissions, interruptions, or delays in transmission, or delivery of any messages by mail, cable, telegraph, wireless or otherwise, whether or not they may be in cipher. Lender shall not be responsible for any act, error, neglect, or default, omission, insolvency or failure in the business of any of its correspondents or for any refusal by Lender or any of its correspondents to pay or honor drafts drawn under the Letters of Credit because of any applicable law, decree or edit, legal or illegal, of any governmental agency now or hereafter in force or for any matter beyond Lender's control. The happening of any one or more of the contingencies referred to in the preceding clauses of this paragraph shall not affect, impair, or prevent the vesting of any of Lender's rights or powers hereunder or under any collateral or security documents executed in connection herewith, or Mortgagor's obligations to make reimbursement. In furtherance and extension and not in limitation of the specific provisions hereinabove set forth, Mortgagor agrees that any action taken by Lender or by any correspondent of Lender under or in connection with the Letters of Credit or the relative drafts or documents, if taken in good faith, shall be

binding on Mortgagor and shall not put Lender or any of its correspondents under any resulting liability to Mortgagor and Mortgagor makes like agreements as to any inaction or omission unless in breach of good faith.

12.8 Lender is authorized and instructed to accept and pay drafts without requiring, and without responsibility for, the delivery of documents, either at the time of acceptance or of payment or thereafter.

12.9 All rights and liens which Lender now or hereafter possesses with respect to this Agreement shall continue unimpaired, and Mortgagor shall remain obligated in accordance with the terms and provisions hereof, notwithstanding the release or substitution of any property which may be held as security hereunder at any time, or of any right or interest therein. No delay, extension of time, renewal, compromise, or other indulgence which may occur, shall impair Lender's rights or powers hereunder. Lender shall not be deemed to have waived any of its rights hereunder unless it or its authorized agent shall have signed such waiver in writing. No such waiver, unless expressly as stated therein, shall be effective as to any transaction which occurs subsequent to the date of such waiver, nor as to any continuance of a breach after such waiver.

12.10 Except as otherwise expressly provided in this Agreement or as Lender and Mortgagor may otherwise expressly agree with regard to the issuance of the Letters of Credit by Lender, the most current edition of the "Uniform Customs and Practice for Documentary Credits," International Chamber of Commerce Brochure, not inconsistent with Article V of the Uniform Commercial Code in effect in the State of Illinois, shall be binding on the Letters of Credit and shall serve, in the absence of proof expressly to the contrary, as evidence of general banking usage.

12.11 As consideration for its agreement to issue the Letter of Credit, Mortgagor shall pay to Lender a fee for each Letter of Credit of \$150 (the "LC Fee") and an annual maintenance fee of \$250 (the "Administration Fee") and costs as determined by Lender. Such sums shall constitute non-refundable fees to Lender, and shall be disbursed to Lender on the Issuance Date of such Letter of Credit.

12.12 Each Letter of Credit will be extended for up to two additional twelve-month periods upon payment of an annual Letter of Credit Fee and Administration Fee in the amounts hereinabove set forth, provided that the Letters of Credit are 100% secured by cash or other collateral acceptable to Lender."

(B) Notwithstanding Section 4.3(b) of the Loan Agreement, Borrower shall satisfy the presale requirement with not less than three (3) acceptable sales Contracts for any combination of Condo Units and/or Townhomes.

4. **Amendments to All Loan Documents.** All of the Loan Documents are hereby amended as follows, effective as of the date hereof:

- (A) All references in the Loan Documents to the principal sum of the Loan shall be deemed to refer to \$1,742,000;
- (B) All references in the Loan Documents to the interest rate on the Loan shall be deemed to refer to the Loan Interest Rate (one (1%) percent in excess of the Reference Rate) with respect to distributions or advances pursuant to the Loan Agreement other than LC Advances, and the Letter of Credit Rate (four (4%) percent in excess of the Reference Rate) with respect to all LC Advances;
- (C) The Loan Documents shall secure the Note as modified by this Modification; and
- (D) All references in the Loan Documents to any Loan Document shall be deemed to refer to such Loan Document as modified by this Modification.
- (E) All references to the General Partner of Borrower shall be deemed to refer to Ellington Court L.L.C. and not Brinshore Development, L.L.C.

5. **Consent of Guarantors.** The Guarantors have received and reviewed this Modification and all documents and instruments in connection herewith and hereby consent to the execution and delivery hereof, agree to pay any and all LC Fees and Administration Fees described herein, and agree that their duties, liabilities and obligations under the Guaranties, as modified hereby, shall not in any manner be impaired, discharged or released by the execution and delivery of this Modification and all documents or instruments in connection therewith or the substitution of Ellington Court L.L.C. for Brinshore Development, L.L.C. as General Partner of Borrower.

6. **Conditions Precedent to Effectiveness.** As conditions precedent to Mortgagee's acceptance of this Modification, the items described in Exhibit "C" attached hereto and by this reference incorporated herein (all of which shall be in form and substance satisfactory to Mortgagee) shall be required to be executed, where applicable, and delivered to Mortgagee, or otherwise satisfied, as applicable.

7. **Reaffirmation of Liability.** Notwithstanding the execution of this Modification, the Guarantors hereby reaffirm and acknowledge their liability and obligations to Mortgagee under the Guaranties, as modified hereby, including the modifications to the Loan Documents set forth herein.

8. **Reaffirmation of Representations and Warranties.** Mortgagor and the Guarantors (hereinafter referred to collectively as the "Obligors") hereby reaffirm as true and correct in all respects, as of the date hereof, any representations and warranties made by such party as contained in the Loan Documents.

9. **Reaffirmation of Covenants.** The Obligors do hereby reaffirm and agree to perform each and every covenant, condition, obligation and provision of such party set forth in the Loan Documents, as herein modified.

10. **No Vitiating of Liability.** Nothing contained herein shall vitiate or discharge any party's liability under the Loan Documents, as herein modified.

11. **Offsets and Defenses.** The Obligors hereby acknowledge and agree that: (i) as of the date of this Modification, there are no and the Obligors hereby waive all offsets, defenses or counterclaims against Mortgagee arising out of or in any way relating to the Loan Documents, including without limitation any covenant of good faith and fair dealing, (ii) they release and forever discharge Mortgagee, its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors and assigns and all persons, firms, corporations and organizations acting or who have acted in its behalf of and from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which they or any of them may now have or claim to have against Mortgagee or any of the other persons or entities described in this clause (ii) as of the date of this Modification, and whether presently known or unknown, and of every nature and extent whatsoever on account of or in any way touching, concerning, arising out of or founded upon the Loan Documents, and (iii) Mortgagee is not in default under the Loan Documents.

12. **Entire Agreement.** The Obligors acknowledge that: (i) there are no other agreements or representations, either oral or written, express or implied, relating to the amendments to the Loan Documents set forth herein and other provisions hereof that are not embodied in this Modification; (ii) this Modification represents a complete integration of all prior and contemporaneous agreements and understandings of Mortgagee and the Obligors relating to the matters set forth herein, and (iii) all such agreements, understandings, and documents, except for the Loan Documents, are hereby superseded by this Modification.

13. **Full Force and Effect; Inconsistency.** Except as herein modified, the terms, conditions and covenants of the Loan Documents shall remain unchanged and otherwise in full force and effect. In the event of an inconsistency between this Modification and the Loan Documents, the terms herein shall control.

14. **Laws of Illinois.** This Modification shall be governed and construed under the laws of the State of Illinois.

15. **Counterparts.** This Modification may be executed in counterparts, all of which, when taken together, shall constitute a single instrument.

16. **Construction.** The words "hereof", "herein", and "hereunder", and other words of a similar import refer to this Modification as a whole and not to the individual Sections in which such terms are used. References to Sections and other subdivisions of this Modification are to the designated Sections and other subdivisions of this Modification as originally executed. The

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headings of this Modification are for convenience only and shall not define or limit the provisions hereof. Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

17. **No Third Party Beneficiaries.** This Modification shall inure to the sole benefit of the Obligors and Mortgagee. Nothing contained herein shall create, or be construed to create, any right in any person not a party to this Modification.


IN WITNESS WHEREOF, the parties have caused this Modification to be executed pursuant to authority duly granted as of the date and year first written above.

MORTGAGOR:


ELLINGTON LIMITED PARTNERSHIP, an Illinois limited partnership

By: **ELLINGTON COURT L.L.C.**, an Illinois limited liability company, General Partner


By: Brint Development, Inc., Member

By: 
Its: Pres

By: RJS Real Estate Services, Inc., Member

By: 
Its: Pres

GUARANTORS:


DAVID B. BRINT


RICHARD J. SCIORTINO

BRINSHORE DEVELOPMENT, L.L.C., an Illinois limited liability company

Brint Development, Inc., Member

By: D. B. B.
Its: Pres

RJS Real Estate Services, Inc., Member

By: Richard L. B.
Its: Pres

BRINT DEVELOPMENT, INC.

By: D. B. B.
Its: Pres

RJS REAL ESTATE SERVICES, INC.

By: Richard L. B.
Its: Pres

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CONSENT OF MORTGAGEE

The undersigned Mortgagee hereby consents to and approves the foregoing Modification of Loan Documents.

DATED: As of June 17, 1999.

U.S. BANK NATIONAL ASSOCIATION

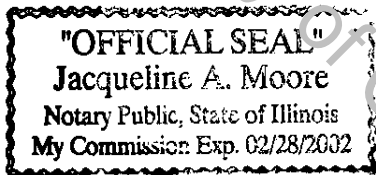
By: Wendy L. Braverman
Its: Assistant Vice President

Property of Cook County Clerk's Office

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, JACQUELINE A. MOORE, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DAVID B. BRINT, as PRESIDENT of BRINT DEVELOPMENT, INC., as a Guarantor, as a member of Ellington Court L.L.C., the general partner of Ellington Limited Partnership, and as a member of Brinshore Development, L.L.C., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such PRESIDENT of said corporation, 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 corporation, as a Guarantor and as a member of said companies as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 17th day of June, 1999.

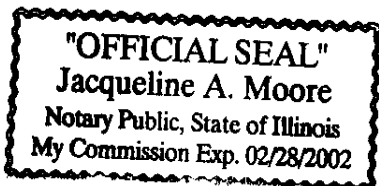


Jacqueline A. Moore
Notary Public

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, JACQUELINE A. MOORE, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that RICHARD J. SCIOTTINO, as PRESIDENT of RJS REAL ESTATE SERVICES, INC., as a Guarantor, as a member of Ellington Court L.L.C., the general partner of Ellington Limited Partnership, and as a member of Brinshore Development, L.L.C., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such PRESIDENT of said corporation, 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 corporation, as a Guarantor and as a member of said companies as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 17th day of June, 1999.



Jacqueline A. Moore
Notary Public

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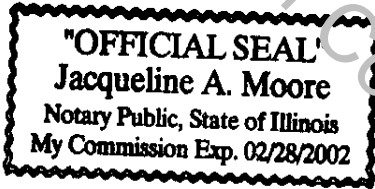
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On June 17th, 1999, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared David B. Brint and Richard J. Sciortino personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within Modification and acknowledged to me that the execution of the Modification was their free and voluntary act for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

(SEAL)



Jacqueline A. Moore
Notary Public in and for the State of Illinois

My commission expires: 2-28-2002

EXHIBIT "A"

Legal Description of Land

Parcel 1: LOT 20 IN PERRY H. SMITH'S SUBDIVISION OF BLOCK 7 IN THE SUBDIVISION BY THE EXECUTORS OF ELIJAH K. HUBBARD (DECEASED) OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Parcel 2: LOT 19 IN PERRY H. SMITH'S SUBDIVISION OF BLOCK 7 IN THE SUBDIVISION BY THE EXECUTORS OF ELIJAH K. HUBBARD (DECEASED) OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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Chicago IL 6

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EXHIBIT "B"

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Other Security Documents

1. Construction Loan Agreement dated April 1, 1999 between Mortgagor and Mortgagee.
2. Security Agreement dated April 1, 1999 between Mortgagor and Mortgagee.
3. UCC-1 and UCC-2 Financing Statements executed by Mortgagor.
4. Environmental Indemnity Agreement dated April 1, 1999 executed by Mortgagor and the Guarantors.

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EXHIBIT "C"

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Conditions Precedent

1. Modification of Loan Documents
2. Payment of LC Fees and Administration Fees
3. Date down endorsement to Mortgagee's title policy
4. Compliance with requirements of Section 9.3(b) of the Loan Agreement