

UNOFFICIAL COPY

91505178 9 1 5 0 5 1 7 8

COOK COUNTY CLERK

JTM1658
04/30/91

1991 SEP 27 PM 2:58FIFTH 91505178
NOTE AND MORTGAGE MODIFICATION AGREEMENT

\$21-

7178234-02
will
1

THIS FIFTH NOTE AND MORTGAGE MODIFICATION AGREEMENT, is made as of this 15th day of April, 1991 by and between Chicago Title and Trust Company ("Trustee"), as Trustee under Trust Agreement dated January 20, 1987 and known as Trust No. 1089621 ("Borrower"), David Israel, Miriam Israel and Aaron Israel ("Beneficiaries") and LaSalle National Bank, previously known as Exchange National Bank of Chicago, a national banking association ("Mortgagee").

W I T N E S S E T H:

WHEREAS, Borrower executed and delivered to Mortgagee a certain Promissory Note dated August 23, 1988 in the stated principal sum of \$1,300,000.00 (the "Original Note") evidencing a loan from Mortgagee to Borrower (the "Loan") in the original principal amount of \$1,300,000.00.

WHEREAS, the Original Note is secured by a certain Mortgage and Security Agreement with Assignment of Rents executed by Borrower dated as of August 23, 1988 and recorded in the Office of the Recorder of Deeds for Cook County, Illinois on September 12, 1988 as Document No. 88415220 (the "Original Mortgage") encumbering the real estate legally described on Exhibit "A" attached hereto (the "Real Estate"), an Assignment of Leases and Rents executed by Borrower and Beneficiaries (the "Original Assignment") dated as of August 23, 1988, which Assignment was recorded on September 12, 1988 in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 88415221, a

This instrument prepared by and after recording should be returned to:

Permanent Index No.:

17-03-207-024

Michael S. Kurtzon
Miller, Shakman, Hamilton & Kurtzon
208 South LaSalle Street
Suite 1200
Chicago, Illinois 60604
(312) 263-3700

Address of Property:

113 East Oak Street
Chicago, Illinois 60611

91505178

1991 SEP 27 PM 2:56

91505178

BOOK 800

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 1 5 0 1 7 8

Security Agreement dated as of August 23, 1988 executed by Borrower and Beneficiaries (the "Original Security Agreement") and by other instruments and security documents (the Original Mortgage, Original Assignment, Original Security Agreement and such other instruments and security documents executed in connection with the Original Note are sometimes referred to herein collectively as the "Original Security Documents").

WHEREAS, the Original Note, the Original Mortgage and the Original Security Documents were previously amended by (i) a certain Note and Mortgage Modification Agreement dated August 15, 1989 and recorded in the Office of the Cook County Recorder of Deeds on October 11, 1989, as Document Number 89481272, (ii) a certain Second Note and Mortgage Modification Agreement effective as of December 31, 1989, and recorded in the Office of the Cook County Recorder of Deeds on February 6, 1990 as Document Number 90061667, (iii) a certain Third Note and Mortgage Modification Agreement dated as of March 27, 1990, and recorded in the Office of the Cook County Recorder of Deeds on May 10, 1990 as Document Number 90218431, and (iv) a certain Fourth Note and Mortgage Modification Agreement dated as of September 15, 1990, and recorded in the Office of the Cook County Recorder of Deeds on November 7, 1990 as Document No. 90544444. The Original Note, the Original Mortgage and the Original Security Documents, as so amended, are referred to herein as the "Note", the "Mortgage" and the "Security Documents".

WHEREAS, pursuant to the Note, as modified by the Fourth Note and Mortgage Modification Agreement, the maturity date of the Note has been extended to April 15, 1991.

WHEREAS, the Borrower and Beneficiaries have requested that Mortgagee extend the maturity date of the Note to September 30, 1991 and grant Borrower and Beneficiaries the right to further extend the maturity date of the Note to December 31, 1991.

WHEREAS, Borrower, Beneficiaries and Mortgagee have agreed to amend the Note, Mortgage and Security Documents as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Beneficiaries and Mortgagee hereby agree as follows:

1. The recitals hereinabove set forth are true and correct and are hereby incorporated into this Agreement by this reference. All defined terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Note, the Mortgage and the Security Documents.

91505178

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 1 5 0 5 1 / 3

2. The maturity date of the Note as set forth therein and as set forth in the Security Documents is hereby extended from April 15, 1991 to September 30, 1991.

3. Borrower and Beneficiaries shall have the right to extend the maturity date of the Note, from September 30, 1991 to December 31, 1991, by written notice from one of the Beneficiaries (the "Notice") of their intention to do so delivered to Mortgagee prior to September 1, 1991, provided the following conditions shall have been satisfied:

(a) As of the date of the Notice, the Note is in good standing, free from any default, and there is no default or event that with the passage of time, giving of notice or both would constitute a default hereunder or under the Note or other Security Documents; and

(b) Payment of the sum of \$6,500 in immediately available funds to Mortgagee as a loan extension fee.

4. In the event Borrower and Beneficiaries extend the maturity date, effective October 1, 1991, the "Interest Rate" per annum provided in the Note shall be increased to the Prime Rate plus one and one-half percent (1 1/2%) per annum.

5. The Note is hereby amended by inserting the following as a new Subsection (iii) to Paragraph 1(b): "and (iii) a certain Mortgage and Security Agreement with Assignment of Rents dated August 23, 1988 and recorded in the Office of the Cook County Recorder of Deeds on September 12, 1988 as Document No. 88413639, executed and delivered by Chicago Title and Trust Company, not personally, but as Trustee under trust Agreement dated December 1, 1986 and known as Trust No. 1089370 ('**Second Trustee**') to Lender, encumbering certain interests in other real and personal property located at 111 East Oak Street, Chicago, Illinois, as amended by (A) a certain Note and Mortgage Modification Agreement dated August 15, 1989 and recorded in Office of the Cook County Recorder of Deeds on October 11, 1989, as Document No. 89481273, (B) a certain Second Note and Mortgage Modification Agreement effective as of December 31, 1989 and recorded in the Office of the Cook County Recorder of Deeds on February 6, 1990 as Document No. 90061668, (C) a certain Third Note and Mortgage Modification Agreement dated as of March 27, 1990 and recorded in the Office of the Cook County Recorder of Deeds on April 9, 1990, as Document No. 90158516, (D) a certain Fourth Note and Mortgage Modification Agreement dated as of September 15, 1990 and recorded in the Office of the Cook County Recorder of Deeds on November 7, 1990 as Document No. 90544442 and (E) a certain Fifth Note and Mortgage Modification Agreement dated as of April 15, 1991 and recorded in the Office of the Cook County Recorder of Deeds on ~~Sept 27~~ 27, 1991 as Document No. 91505178 (collectively, the '**Second Mortgage**')."

91505178

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

6. The Note is hereby amended by inserting the following in Paragraph 4(a) as an additional events of default: "or (iii) default is made in the payment of any part of the principal and interest due pursuant to that certain Promissory Note dated August 23, 1988 made by Second Trustee payable to the order of Mortgagee in the aggregate, original principal amount of \$1,400,000.00, as heretofore amended (the 'Second Note') as the same becomes due and payable, or of any sums advanced pursuant to the terms of the Second Note, the Second Mortgage or any other documents, as amended, securing or evidencing the indebtedness evidenced by the Second Note (the 'Second Loan Documents'), or (iv) there shall be a default under the Second Mortgage or other Second Loan Documents not cured within any applicable grace periods,"

7. The Mortgage is hereby amended by inserting the following to Paragraph 16 as an additional events of default: "or (j) Any event of default occurs under the Second Note, Second Mortgage or any of the Second Loan Documents (as such terms are defined in the Note) and such default shall not be cured within the applicable cure or grace period, if any."

8. The third paragraph on page 1 of the Mortgage is hereby amended by: (A) inserting the following as a new subsection (iv): "and (iv) the payment when and as due and payable of the principal of and interest on the Second Note (as defined in the Note) or so much thereof as may be advanced from time to time; provided, however, that all funds derived from the Mortgaged Premises, including, without limitation, proceeds of condemnation, insurance proceeds and proceeds received from the disposition of the Mortgaged Premises following an event of default shall be applied first to all indebtedness evidenced by the Note and, upon payment in full of the Note, to the indebtedness evidenced by the Second Note; and (B) inserting in line 9 thereof the phrase "and (iv)" after the phrase "and (iii)".

9. The Mortgage is hereby amended by inserting the number "\$5,000,000" in Paragraph 33 in substitution for the number "\$2,000,000".

10. Borrower and Beneficiaries acknowledge that no defenses, offsets or counterclaims are, as of the date hereof, available to Borrower under the Note or any of the Security Documents. Borrower and Beneficiaries hereby remake and ratify all representations, warranties and agreements made by any of them in and upon the execution and delivery of the Note and other Security Documents.

11. The Note is hereby amended to delete any references to "Reference Rate" and substitute the phrase "Prime Rate" in substitution thereof.

12. Nothing herein contained shall impair the Note or Security Documents in any way nor alter, waive, annul, vary nor affect any provision, condition or covenant herein contained

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

except as expressly herein provided nor affect or impair any right, power or remedy of Mortgagee, it being the intention of the parties hereto that the terms and provisions of the Note and Security Documents shall continue in full force and effect except as expressly modified in connection herewith.

13. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

14. No extension, change, modification or amendment of any kind or nature whatsoever, to or of this Agreement shall be made or claimed by Borrower or Beneficiaries, and no notice of any extension, change, modification or amendment, made or claimed by Borrower or Beneficiaries shall have any force or effect whatsoever unless the same shall be reduced to writing and signed by the parties.

15. The modifications provided for in this Agreement shall be effective only upon the satisfaction of the following conditions:

(a) As of the date of recordation of this instrument, the Note is in good standing, free from any default, and there is no default or event that with the passage of time, giving of notice or both would constitute a default hereunder or under the Note or other Security Documents;

(b) After the recordation of this Agreement with the Cook County Recorder of Deeds, Chicago Title Insurance Company ("Title Insurer") shall issue an endorsement (dated as of the date of the recording of this Agreement) to the ALTA Loan Policy previously issued to Mortgagee as Policy No. 7178234 pursuant to which the Title Insurer shall insure Mortgagee that the Mortgage, as amended hereby, constitutes a valid first lien on real estate, subject only to exceptions acceptable to Mortgagee;

(c) Delivery to Mortgagee of an opinion of counsel for Borrower and Beneficiary satisfactory to Mortgagee;

(d) Delivery to Mortgagee of a Reaffirmation of Guaranty executed by Aaron Israel and David Israel;

(e) Payment of the sum of \$6,500 in immediately available funds to Mortgagee as a loan extension fee; and

(f) Delivery to Mortgagee of such other documents as Mortgagee may reasonably request.

16. Except as herein expressly amended, the Note and other Security Documents shall continue unmodified and in full force and effect.

91505178

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

17. This Instrument is executed by Chicago Title and Trust Company, 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 said Trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in the Note contained shall be construed as creating any liability on said Trustee personally to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein contained, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as said Trustee personally is concerned, the legal holder or holders of said Note and the owners or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said Note provided or by action to enforce the personal liability of any guarantors of the indebtedness hereby secured or by proceeding against any other collateral security therefor.

IN WITNESS WHEREOF, this instrument is executed on the day and year first above written.

Chicago Title and Trust
Company, as Trustee under
Trust Agreement dated January
20, 1987 and known as Trust
No 1089621

By: *James P. Dickel*
Its: Trust President

David Israel
David Israel

Miriam Israel
Miriam Israel

Aaron Israel
Aaron Israel

LaSalle National Bank

ATTEST:

By: *William J. [Signature]*
Its: Commercial Banking Officer

By: *Richard L. Bennett*
Its: First Vice President

UNOFFICIAL COPY

Property of Cook County Clerk's Office

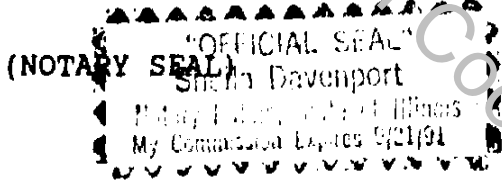
UNOFFICIAL COPY

91505178

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I HEREBY CERTIFY that on this 1st day of May, 1991, before me personally appeared [Name] of CHICAGO TITLE AND TRUST COMPANY, as Trustee under Trust Agreement dated January 20, 1987 and known as Trust No. 1089621, to me known to be the same person whose name is subscribed to the foregoing instrument as such [Name], and acknowledged that he signed and delivered said instrument as his free act and deed and as the free act and deed of said Company, for the uses and purposes therein mentioned.

WITNESS my signature and official seal at Chicago in the County of Cook and State of Illinois, the day and year last aforesaid.



Sheila Davenport
Notary Public

My Commission Expires: _____

Cook County Clerk's Office

91505178

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 1 5 9 5 1 7 3

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

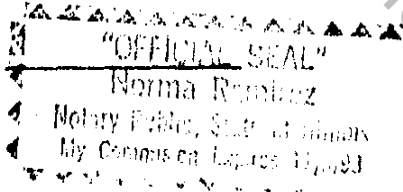
I, Norma Ramirez, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Richard L. Bennett, 1st Vice President of LASALLE NATIONAL BANK, and Matthew J. Napoli, Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such 1st Vice President and Secretary respectively, 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 and voluntary act of said Bank, for the uses and purposes therein set forth; and the said Secretary did also then and there acknowledge that he as custodian of the corporate seal of said Bank did affix the said corporate seal of said Bank to said instrument as his own free and voluntary act, and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 2nd day of May 1991.

(NOTARY SEAL)

Norma Ramirez
Notary Public

My Commission Expires:



Clerk's Office

91505178

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 1 5 3 7 1 7 8

EXHIBIT "A"

LEGAL DESCRIPTION

The East 1/2 of Lot 5 in Lawrence's Subdivision of Lot 7 in the Subdivision of the North 1/2 of Block 8 in the Subdivision by Commissioners of Illinois and Michigan Canal of the South fractional 1/4 of Section 3, Township 39 North, Range 14 East of the Third Principal Meridian in Cook County, Illinois.

Property of Cook County Clerk's Office

91505178

UNOFFICIAL COPY

Property of Cook County Clerk's Office