

91674871

Store No. 8755  
Cook County  
Illinois

WHEN RECORDED RETURN TO:

GIBSON, DUNN & CRUTCHER  
1010 F STREET, SUITE 300  
SACRAMENTO, CA 95814

91674871

is, Esq.

AMENDMENT TO MORTGAGE

THIS AMENDMENT TO MORTGAGE (the "Amendment"), dated effective as of November 27, 1991, by and between COLOR TILE, INC., a Delaware corporation having an office at 515 Houston Street, Fort Worth, Texas 76102-3933 ("Mortgagor") and MANUFACTURERS HANOVER TRUST COMPANY, a New York banking corporation having an office at 270 Park Avenue, New York, New York 10017 ("MHTC"), as Agent for the Banks parties to the Credit Agreement (each as hereinafter defined) (MHTC, in such capacity, "Mortgagee"). Capitalized terms used but not defined herein shall have the respective meanings ascribed in the Credit Agreement.

123.75  
T01111 TRAN 1989 12/23/91 15:01:00  
63784 & A \* 91-674871  
COOK COUNTY RECORDER

Preliminary Statement

A. Mortgagor, the banks and other financial institutions parties thereto (the "Existing Lenders") and Natwest USA Credit Corp. ("NWUSA"), as agent, are parties to that certain Senior Secured Credit Agreement dated as of December 27, 1989, as amended and restated in its entirety as of June 1, 1990 (as so amended and restated, the "Existing Credit Agreement"), pursuant to which the Existing Lenders agreed to provide to Mortgagor a revolving credit facility of up to a maximum principal amount of \$50,000,000 outstanding at any time (the "Existing Revolving Credit Facility"). Advances of the Existing Revolving Credit Facility made by each Lender are evidenced by certain notes made by Mortgagor to the order of such Lender (collectively, the "Existing Notes").

B. Mortgagor, the several lenders from time to time parties thereto (the "Banks") and Mortgagee are parties to that certain Credit Agreement dated as of even date herewith (as the same may be amended, modified or otherwise supplemented from time to time, the "Credit Agreement") pursuant to which, among other things, the Banks have agreed to make certain loans to be used to refinance the indebtedness of Mortgagor under the Existing Credit Agreement. In connection with the foregoing refinancing pursuant to the Credit Agreement, National Westminster Bank USA ("Natwest") and the other Existing Lenders have endorsed the Existing Notes to Mortgagee.

C. The obligations of Mortgagor under and in connection with the Existing Credit Agreement and the Existing Notes are

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secured, in part, by that certain Mortgage (the "Existing Mortgage") dated as of May 13, 1991, made by Mortgagor to NWUSA, as agent for the Existing Lenders and for Natwest, encumbering the property described in Exhibit "A" attached hereto and made a part hereof, and recorded prior to this Amendment to Mortgage in the Recorder's Office of Cook County, Illinois (the "Recorder's Office"). In connection with the endorsement of the Existing Notes by Natwest and the other Existing Lenders, NWUSA, as agent, has assigned the Existing Mortgage to Mortgagee by that certain Assignment of Lien (the "Assignment") dated as of even date herewith by NWUSA, as agent, as assignor, to Mortgagee, as assignee, and to be recorded immediately prior hereto in the Recorder's Office (the Existing Mortgage, as assigned by the Assignment, is hereinafter referred to as the "Mortgage").

D. Mortgagor and Mortgagee desire to amend the Mortgage to provide, among other things, that it secures the Existing Notes, as endorsed to Mortgagee (and as amended and restated by the hereinafter defined Notes), as well as the obligations of Mortgagor under the Notes (as hereinafter defined) and under the Credit Agreement, and the terms, covenants and conditions of the Existing Notes, as endorsed (and as amended and restated by the hereinafter defined Notes), the Notes (as hereinafter defined) and the Credit Agreement are incorporated herein and are hereby made a part of the mortgage.

Agreement

NOW, THEREFORE, in consideration of the premises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor and Mortgagee hereby agree that the Mortgage is amended as follows:

1. All references contained in the Mortgage:

(a) to the "Loan Agreement" shall be deemed to refer to the "Credit Agreement" as defined in the recitals to the Amendment;

(b) to specific provisions of the Loan Agreement shall be deemed to refer to the comparable provisions in the Credit Agreement, including without limitation, the following references:

(i) the reference in Paragraph 5(a) of the Mortgage to Section 5.07 of the Loan Agreement shall be amended to refer to Section 8.5 of the Credit Agreement.

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(ii) the reference in Paragraph 6(b) of the mortgage to Section 5.10 of the Loan Agreement shall be amended to refer to Section 8.3 of the Credit Agreement.

(iii) the reference in Paragraph 9 of the Mortgage to Section 6.01(f) of the Loan Agreement shall be amended to refer to Sections 9.2 and 9.5 of the Credit Agreement.

(iv) the reference in Paragraph 19(a) of the Mortgage to Section 6.04 of the Loan Agreement shall be amended to refer to Section 9.5 of the Credit Agreement.

(v) the reference in Paragraph 19(b) of the Mortgage to Section 6.03 of the Loan Agreement shall be amended to refer to Sections 9.4 of the Credit Agreement.

(vi) the reference in Paragraph 37 of the Mortgage to Section 2.00 of the Loan Agreement shall be amended to refer to Section 5.11 of the Credit Agreement.

(c) to "Natwest" and the "Lenders" shall be deemed to refer to "MHTC" and the "Banks", respectively, each as defined in the recitals to the Amendment;

(d) to the "Notes" shall refer to the "Notes" as hereinafter defined; and

(e) to "Credit Facility", "any of the Subsidiaries of Mortgagor" or "Default" (but not "Event of Default") shall be deemed stricken from the Mortgage.

2. The Mortgage is hereby amended by deleting the recital paragraphs in their entirety and substituting therefor the recital paragraphs contained in this Amendment.

3. The Mortgage is hereby amended by deleting in its entirety the paragraphs therein following the recitals (which paragraphs begin with the paragraph which begins with the phrase "NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS" and which end before the definition of "Property" set forth as A.-H.) and substituting the following paragraphs therefor:

"For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees that to secure:

(a) prior to the Collateral Spread Date, (i) the payment of the principal indebtedness of Mortgagor to Mortgagee and the Banks evidenced by the Tranche A

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Term Loan Notes and the Tranche A Revolving Credit Loans evidenced by the Revolving Credit Notes and the obligations and liabilities in respect of the Letters of Credit (collectively the "Tranche A Revolving Credit Obligations") in the aggregate in the principal amount not to exceed One Hundred Twenty-Five Million Dollars (\$125,000,000) and (ii) if at any time the aggregate unpaid principal amount of the Tranche A Term Loan Notes and the Tranche A Revolving Credit Obligations is less than \$125,000,000, a portion of the unpaid interest on the Tranche A Term Loan Notes and the Tranche A Revolving Credit Obligations and all other obligations and liabilities of Mortgagor to Mortgagee or the Banks, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with the Credit Agreement, any Letter of Credit or L/C Application, the other Credit Documents and any other document executed and delivered or given in connection therewith or herewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all reasonable fees and disbursements of counsel to Mortgagee or to the Banks that are required to be paid by Mortgagor pursuant to the terms of the Credit Agreement) or otherwise, in an amount not to exceed the difference between \$125,000,000 and the aggregate unpaid principal amount of the Tranche A Term Loan Notes and the Tranche A Revolving Credit Obligations at such time;

(b) on and after the Collateral Spread Date, (i) the payment of the indebtedness of Mortgagor to Mortgagee and the Banks evidenced by (A) the Tranche A Term Loan Notes in the principal amount not to exceed Seventy-Five Million Dollars (\$75,000,000); (B) the Tranche B Term Loan Notes in the principal amount not to exceed Seventy-Five Million Dollars (\$75,000,000); (C) the Revolving Credit Notes and the Swing Line Notes and the reimbursement obligations evidenced by the Letters of Credit and the L/C Application, collectively in the aggregate principal amount not to exceed One Hundred Million Dollars (\$100,000,000) (the Tranche A Term Loan Notes, the Tranche B Term Loan Notes, the Revolving Credit Notes, the Swing Line Note, the Letters of Credit and the L/C Application, as the same may be amended, supplemented, extended, renewed, replaced or otherwise modified from time to time, are hereinafter referred to individually as a "Note" and collectively as the "Notes");

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(c) on and after the Collateral Spread Date, all interest, fees and other amounts payable under the Notes and all other amounts payable to Mortgagee and/or the other Banks under the Credit Agreement (the items set forth in clauses (a), (b) and (c) above are hereinafter referred to collectively as the "Indebtedness"); and

(d) the performance of all covenants, agreements, obligations and liabilities of Mortgagor (the "Obligations") under or pursuant to the provisions of the Credit Agreement, the Notes, this Mortgage, any other document securing payment of the Indebtedness (the "Security Documents") and any amendments, supplements, extensions, renewals, restatements, replacements or modifications of any of the foregoing (the Credit Agreement, the Notes, the Security Documents and all other documents or instruments from time to time evidencing, securing or guaranteeing the payment of the Indebtedness or the performance of the Obligations, as any of the same may be amended, supplemented, extended, renewed, restated, replaced or modified from time to time, are collectively referred to as the "Loan Documents");

Mortgagor hereby grants to Mortgagee a lien upon and security interest in, and hereby mortgages, grants, assigns, transfers and sets over to Mortgagee, and to its successors and assigns forever, all of Mortgagor's interest in and to the following (collectively, the "Property"):

4. The Mortgage is hereby amended by deleting in its entirety the paragraphs which follow the description of Property set forth as Paragraphs A. through H. and which begin with the paragraph which precedes Section 1 therein which begins with the phrase "Provided, that if" and substituting the following paragraphs therefor:

"Provided that if (i) Mortgagor shall pay the Indebtedness and the interest and other charges thereon at the time and times, and in the manner provided in the Notes, the Credit Agreement and this Mortgage and (ii) each Bank's commitment and obligation to lend under the Credit Agreement is terminated, Mortgagee shall deliver to Mortgagor a satisfaction of this Mortgage in proper and recordable form.

And Mortgagor covenants, represents and warrants to and with Mortgagee, MHTC and the Banks as follows:"

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5. The Mortgage is hereby amended by deleting all references to the "Franchise Guaranty" in their entirety. Without limitation of the foregoing, the Mortgage shall be amended to delete certain of such references to "Franchise Guaranty" as follows:

- a. the provision regarding the Franchise Guaranty set forth at the end of Paragraph 20(a) of the Mortgage shall be deemed stricken from the Mortgage; and
- b. clause (iii) in each of the following Paragraphs of the Mortgage shall be deleted in its entirety and the word "and" shall be inserted in substitution for the comma at the end of clause (i) in each of the following paragraphs:
  - (i) subparagraph 5(c) therein; and
  - (ii) subparagraph 15(c) therein.

6. The Mortgage is hereby amended by deleting the definition of "Permitted Liens" in paragraph 2 thereof and substituting therefor the definition of "Permitted Liens" as defined in the Credit Agreement.

7. The Mortgage is hereby amended by deleting the following language which begins on the fourth line of Paragraph 1 of the Mortgage: "and the other agreements, instruments and writings executed and delivered by Mortgagor or any of its Subsidiaries in connection therewith (collectively, as the same may be renewed, supplemented, modified, consolidated, spread, extended and replaced, the "Loan Document")" and substituting therefor the phrase "and the Loan Documents".

8. The Mortgage is hereby amended by deleting Paragraph 16 of the Mortgage in its entirety and substituting therefor the phrase "Intentionally Deleted".

9. The Mortgage is hereby amended by deleting the first sentence of Paragraph 18 of the Mortgage and substituting therefor the following sentence: "This Mortgage is made contemporaneously with other Mortgages and Deeds of Trust of even and different dates herewith (the "Contemporaneous Mortgages") given by Mortgagor to or for the benefit of Mortgagee covering property located in numerous other states."

10. The Mortgage is hereby amended by deleting in their entirety the last eight lines of subparagraph 20(a) after the parenthetical phrase "(as such term is defined in the Loan Agreement)".

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11. The Mortgage is hereby amended by deleting Paragraph 20(b) in its entirety and by redesignating Paragraph 20 "Event of Default".

12. The Mortgage is hereby amended by deleting in their entirety the addresses for notices to Mortgagee and any Bank contained in Paragraph 42 therein and substituting the following addresses therefor:

"If to Mortgagee:

Manufacturers Hanover Trust Company,  
As Agent  
270 Park Avenue  
New York, New York 10017  
Attention: Justin Driscoll  
Facsimile Number: (212) 972-0009

With a copy to:

Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017  
Attention: L. Francis Huck, Esq.  
Facsimile Number: (212) 455-2502

If to any Bank, at its address set forth in the Credit Agreement;"

13. The Mortgage is hereby amended by deleting in its entirety the definition of "Applicable Rate" contained in subparagraph 56(a) therein and substituting the following definition therefor:

"(a) The "Applicable Rate" shall mean the rate which is the lesser of (i) 2% per annum plus the rate of interest otherwise in effect pursuant to the Credit Agreement for MHTC Rate Loans or (ii) the maximum interest rate permitted by applicable law;"

14. The Mortgage is hereby amended by substituting the amounts "\$125,000,000 prior to the Collateral Spread Date and \$250,000,000 on and after the Collateral Spread Date" for all references to the amount "\$50,000,000" as the maximum principal amount of all indebtedness, including future advances, which at any one time shall be secured by the Mortgage.

15. This Amendment may be executed in counterparts, all of which, taken together, shall constitute one and the same instrument, and either of the parties hereto may execute this Amendment by signing any such counterpart.

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16. Except as modified by this Amendment, the Mortgage is hereby ratified and confirmed hereby and shall remain in full force and effect.

17. The Mortgage is hereby amended by deleting Paragraph 59 of the Mortgage in its entirety and substituting the following paragraph therefor:

"59. Release. Mortgagee agrees to deliver to Mortgagor a satisfaction of this Mortgage in proper and recordable form upon the earlier to occur of: (a) a sale of the Property permitted hereunder but only upon receipt by Mortgagee of any net proceeds from such sale required to be paid to Mortgagee pursuant to the terms of the Credit Agreement or (b) upon Mortgagor's request following the occurrence of a Material Taking or Material Casualty provided that no Event of Default shall exist or (c) the closing of a Real Estate Financing permitted under and in accordance with the provisions of the Credit Agreement secured in whole or in part by the Property or (d) such time as (i) Mortgagor shall pay the indebtedness and the interest and other charges thereon at the time and times, and in the manner provided in the Notes, the Credit Agreement and this mortgage and (ii) each Bank's commitment and obligation to lend under the Credit Agreement is terminated."

18. The Mortgage is hereby amended by substituting the term "Credit Agreement" for all references to "Credit Facility" in paragraph 60 of the Mortgage.

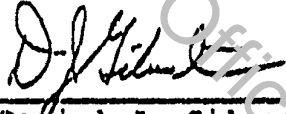
The parties hereto have caused this Amendment to be duly executed as of the date first written above.

MORTGAGOR:  
COLOR TILE, INC.

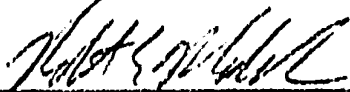
[SEAL]

Attest:

By:   
Name: David Crosland  
Title: Assistant Secretary

By:   
Name: Daniel J. Gilmore  
Title: Vice President

In the presence of:

  
Name: Robert E. Mohrman

  
Name: WILLIAM J. CALLAGHER

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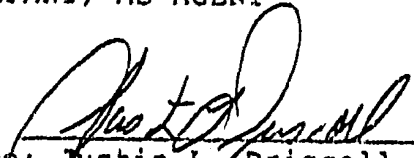
MORTGAGEE:

MANUFACTURERS HANOVER TRUST  
COMPANY, AS AGENT

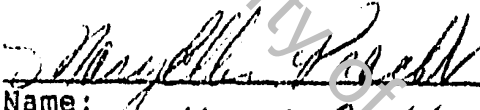
[SEAL]

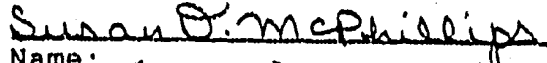
Attest:

  
By: \_\_\_\_\_  
Name: Matthew J. Trachtenberg  
Title: Secretary

By:   
Name: Justin L. Driscoll  
Title: Vice President

In the presence of:

  
Name: \_\_\_\_\_  
Mary E. Pucht

  
Name: Susan D. McPhillips

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STATE OF N.Y.  
COUNTY OF N.Y.

I, DAVID F. KUNZ, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Daniel J. Gilmartin personally known to me to be the Vice President of COLOR TILE, INC., a Delaware corporation, and David Crosland, personally known to me to be the Assistant Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Vice President and Assistant Secretary, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 9<sup>th</sup> day of December, 1991.

David F. Kunz  
NOTARY PUBLIC

Commission Expires: 6/19/93

DAVID F. KUNZ  
Notary Public, State of New York  
No. 31-4932511  
Qualified in New York County  
Commission Expires June 19, 1993

STATE OF NEW YORK  
COUNTY OF NEW YORK

I, Steven Maher, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Justin L. Driscoll personally known to me to be the Vice President of MANUFACTURERS HANOVER TRUST COMPANY, as Agent, a New York corporation, and Matthew J. Trachtenberg, personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Vice President and Secretary, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 11<sup>th</sup> day of December, 1991.

Steven Maher  
NOTARY PUBLIC

Commission Expires: 10/15/92

STEVEN MAHER  
NOTARY PUBLIC, State of New York  
No. 31-4973136  
Qualified in New York County  
Certificate Filed in New York County  
Commission Expires October 15, 1992

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AFTER RECORDING  
PLEASE RETURN TO:

GIBSON, DUNN & CRUTCHER  
1010 F STREET, SUITE 300  
SACRAMENTO, CA 95814

19.



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## Exhibit A Description of Land

Cook County, Illinois

Store Number 8755

Lot Thirty-Nine (39) and the North Ten (10) feet of Lot Forty (40) in Madsen's Second North of Oak Park Subdivision in the South West Quarter (SW 1/4) of Section Thirty-One (31), Township Forty (40) North, Range Thirteen (13) East of the Third Principal Meridian; and commonly known as 1741-1743 North Harlem Avenue, in the City of Chicago, State of Illinois, improved with a one-story building, together with all the rights, privileges, easements and appurtenances thereunto belonging.

Permanent Index Number: 13-31-314-037 (Volume 364) (and)  
13-31-314-005 (Volume 364)

Common Address: 1743 N. Harlem Ave.  
Chicago, Illinois

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