

UNOFFICIAL COPY

97-230694

27
39m

SECOND LOAN MODIFICATION AGREEMENT

This Second Loan Modification Agreement ("Agreement") is made as of December 1, 1992 by and among Dominick DiMatteo, Jr. ("Beneficiary"), American National Bank and Trust Company of Chicago, not personally but solely as Trustee under Trust Agreement dated May 5, 1987 and known as Trust No. 102409-01 ("Stonebrook Mortgagor") and LaSalle National Trust N.A., not personally but solely as Trustee under Trust Agreement dated November 1, 1985 and known as Trust No. 110462 ("Rivers Edge Mortgagor"), Trust Agreement dated February 15, 1976 and known as Trust No. 49944 ("North Broadway Mortgagor"), and Trust Agreement dated March 20, 1980 and known as Trust No. 102537 ("Kane County Mortgagor") (Beneficiary, Stonebrook Mortgagor, Rivers Edge Mortgagor, North Broadway Mortgagor and Kane County Mortgagor are sometimes collectively referred to herein as the "Borrower"), and The Northern Trust Company, an Illinois banking corporation ("Lender").

RECITALS:

A. Lender is the holder and owner of that certain Revolving Loan Note dated October 18, 1990 in the original principal sum of Two Million Dollars (\$2,000,000.00) from Borrower payable to the order of Lender, which note was amended pursuant to that certain Note Modification Agreement dated as of November 1, 1991 between Borrower and Lender ("First Modification Agreement") (said Revolving Loan Note as amended by the First Modification Agreement is referred to herein as the "Note").

B. The Note is secured by, among other things, (i) that certain Second Mortgage, Assignment of Rents, Security Agreement and Fixture Financing Statement dated as of October 18, 1990 ("Second Mortgage") by Rivers Edge Mortgagor and Stonebrook Mortgagor in favor of Lender recorded in the Cook County, Illinois Recorder's Office on November 7, 1990 as Document No. 90543769; (ii) that certain Second Mortgage by North Broadway Mortgagor in favor of Lender recorded with the Cook County, Illinois Recorder's Office as Document No. 90544568 and filed with the Office of the Registrar of Torrens as Document No. 3924713; and (iii) that certain Second Mortgage executed by Kane County Mortgagor in favor of Lender recorded in the Kane County, Illinois Recorder's Office on November 7, 1990 as Document No. 90K58528 (said second mortgages are collectively referred to herein as the "Second Mortgages").

C. Pursuant to the First Modification Agreement, among other things, the maturity date of the Note ("Maturity Date") was extended from November 1, 1991 to December 1, 1992 and the interest provisions contained in the Note were amended.

D. Borrower has requested that Lender, and Lender is willing to, further extend the Maturity Date subject to the terms and conditions hereof.

This Agreement prepared by and after recording should be returned to:
Jeanne Doyle Kelly, Holleb & Coff,
55 East Monroe, Suite 4100
Chicago, Illinois 60603

333

1274860
7274861
02
12/1

97-230694

UNOFFICIAL COPY

E. Borrower and Lender each desire to further amend the terms of the Note, the Second Mortgages and all other Loan Documents (as defined in the Second Mortgages) in accordance with the terms and provisions set forth herein.

AGREEMENT

In consideration of Ten Dollars (\$10.00), the mutual promises contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, Borrower and Lender agree to amend the Note, the Second Mortgages, and all other Loan Documents as follows:

1. The recitals set forth above are accurate and complete and hereby restated by this reference.

2. The Maturity Date is hereby extended from December 1, 1992 to December 15, 1993, and all references to the Maturity Date contained in the Note, the Second Mortgages or any of the other Loan Documents are hereby amended accordingly.

3. Borrower represents and covenants that after giving effect to this Agreement, there is no event or circumstance currently existing which constitutes a default under any of the Loan Documents or which would, upon the giving of notice or the expiration of any applicable cure period, constitute a default under any of the Loan Documents. Borrower hereby represents and warrants to Lender that there has been no material adverse change in the financial condition of any of Borrower, and that all representations, warranties and covenants of Borrower in any and all of the Loan Documents are true, accurate and correct as of the date hereof.

4. Borrower shall pay any and all costs and expenses, including, without limitation, attorney fees and costs and title charges incurred by Lender in connection with or arising as a result of this Agreement, including, without limitation, the preparation and negotiation of this Agreement, and any other documents required in connection herewith.

5. Each of the Second Mortgages is hereby amended to include the following paragraph:

Compliance with the Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the Illinois Mortgage Foreclosure Law, as amended, (Chapter 110, Sections 1101, et seq., Ill.Rev.Stat.) (the "IMF Act"), the IMF Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other

00120694

UNOFFICIAL COPY

provision of this Mortgage that can be construed in a manner consistent with the IMF Act.

(b) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the IMF Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(c) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the IMF Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the IMF Act to the full extent permitted by law.

(d) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Section 15-1510 and 15-1512 of the IMF Act, whether incurred before or after any decree or judgment of foreclosure, shall be added to the indebtedness hereby secured or by the judgment of foreclosure.

6. Each reference to the Note, the Second Mortgages or any of the other Loan Documents in this Agreement, the Note, the Second Mortgages, or any of the other Loan Documents shall mean said Note, Second Mortgage or other Loan Document as amended by this Agreement.

7. Except as otherwise provided in this Agreement, all other terms and conditions set forth in the Note, the Second Mortgages and the other Loan Documents shall remain in full force and effect, with the same effect as if all such terms and conditions were reprinted in full herein. In the event of any conflict between the provisions of this Agreement and the provisions of the Note, any of the Second Mortgages or any of the other Loan Documents, the provisions of this Agreement in each case shall govern and control.

8. Each of Borrower hereby remises, releases, acquits, satisfies and forever discharges Lender of and from any and all manner of action and actions, cause and causes of action, suits, losses, collection costs, expenses (including without limitation attorneys' fees and expenses), covenants, controversies, promises, damages, whatsoever in law or in equity which it ever had, now has, or which any personal representative, successor, assignee or beneficiary thereof hereafter can, shall, or may have against Lender arising under or in connection with any actions taken or actions not taken by Lender in connection with the Note, any of the Second Mortgages or any of the other Loan Documents.

UNOFFICIAL COPY

9. A copy of this Agreement shall be attached to and made a part of the Note and each of the Second Mortgages and the other Loan Documents. Borrower warrants to Lender that each of the Note, the Second Mortgages and the other Loan Documents, as modified hereby, is valid, binding, and enforceable according to its terms and has been duly executed pursuant to appropriate corporate authorization. This Agreement may be executed by the parties hereto in counterpart with the same force and effect as if each party had executed the same copy. Each of Borrower warrants and represents to Lender that each of the Note, the Second Mortgages and the other Loan Documents to which it is a party, as modified hereby, is and shall remain valid, binding and enforceable according to their respective terms against such Borrower whether or not this Agreement, the First Modification Agreement, or any other modification to any of the Loan Documents, is executed by any one or more of the other signatories hereto.

10. Time is of the essence of this Agreement.

11. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same instrument.

12. This Agreement is executed by American National Bank and Trust Company of Chicago and LaSalle National Trust N.A., not personally but as Trustees of aforesaid in the exercise of the power and authority conferred upon and vested in them as such Trustees. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings, and agreements herein made on the part of said Trustees while in form purporting to be the representations, covenants, undertakings, and agreements of said Trustees are nevertheless made and intended not as personal representations, covenants, undertakings, and agreements by the Trustees or for the purpose or with the intention of binding Trustees personally, but are made and intended solely for the purpose of binding the Trust property, and this Agreement is executed and delivered by said Trustees not in their own right, but solely in the exercise of the power conferred upon them as said Trustees; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Trustees on account of this Agreement, either express or implied, all such personal liability, if any, being expressly waived and released. Notwithstanding the foregoing, nothing herein contained shall modify or discharge the liability expressly assumed by any co-maker or any guarantor of the Note, as modified hereby.

COOK COUNTY, ILLINOIS
FILED FOR RECORD

33 JUN -1 PM 12:17

93410694

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first above written by each of the parties hereto.

Dominick DiMatteo
Dominick DiMatteo, Jr.

AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO, not personally
but as Trustee under Trust No.
102409-01

Attest: [Signature]
Its: _____

By: [Signature]
Its: _____

LASALLE NATIONAL TRUST N.A.,
not personally but as Trustee
under Trust No. 110462

Attest: _____
Its: _____

By: _____
Its: _____

LASALLE NATIONAL TRUST N.A.
not personally but as Trustee
under Trust No. 49944

Attest: _____
Its: _____

By: _____
Its: _____

LASALLE NATIONAL TRUST N.A.
not personally but as Trustee
under Trust No. 102537

Attest: _____
Its: _____

By: _____
Its: _____

THE NORTHERN TRUST COMPANY, INC.
Illinois banking corporation

Attest: [Signature]
Its: VICE PRESIDENT

By: [Signature]
Its: VICE PRESIDENT

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first above written by each of the parties hereto.

Dominick DiMatteo
Dominick DiMatteo, Jr.

AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO, not personally
but as Trustee under Trust No.
102409-01

Attest: _____
Its: _____

By: _____
Its: _____

LASALLE NATIONAL TRUST N.A.,
not personally but as Trustee
under Trust No. 110462

Attest: Nancy G. Stack
Its: ASSISTANT

By: Joyelle
Its: SR. VICE PRESIDENT

LASALLE NATIONAL TRUST N.A.
not personally but as Trustee
under Trust No. 49944

Attest: Nancy G. Stack
Its: _____

By: Joyelle
Its: PRESIDENT

LASALLE NATIONAL TRUST N.A.
not personally but as Trustee
under Trust No. 102537

Attest: Nancy G. Stack
Its: _____

By: Joyelle
Its: _____

THE NORTHERN TRUST COMPANY, an
Illinois banking corporation

Attest: Daniel K. ...
Its: VICE PRESIDENT

By: Stephen M. Wolfe
Its: VICE PRESIDENT

UNOFFICIAL COPY

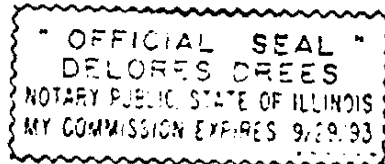
STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, Delores Drees, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Dominick DiMatteo, Jr. who 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 the said instrument, as his free and voluntary act.

GIVEN under my hand and notarial seal this 25th day of February, 1993.

Delores Drees
Notary Public

(SEAL)



Property of Cook County Clerk's Office

0712208394

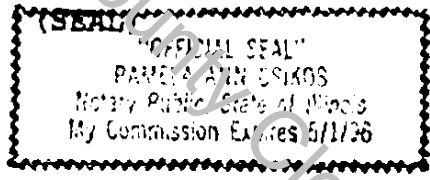
UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.

I, Pamela A. Csikos, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ~~1. Robert J. ...~~ and ADOLF A. ..., personally known to me to be the VICE PRESIDENT and ASSISTANT SECRETARY of American National Bank and Trust Company of Chicago are the same persons whose names are subscribed to the foregoing instrument as such ... PRESIDENT and ASSISTANT SECRETARY of said Bank, appeared before me this day in person and acknowledged that as such they signed and delivered the said instrument pursuant to authority, as their free and voluntary acts, and as the free and voluntary acts and deeds of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this day of APR 21 1993, 1993.

Pamela Ann Csikos
Notary Public



CLERK'S OFFICE

900230694

UNOFFICIAL COPY

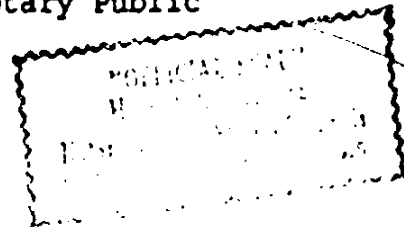
STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, Harriet Denisevicz, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Joseph W. Lang and Nancy A. Stack, personally known to me to be the Sr. Vice President and Asst Secretary of LaSalle National Trust, N.A. are the same persons whose names are subscribed to the foregoing instrument as such Sr. Vice President and Asst Secretary of said Bank, appeared before me this day in person and acknowledged that as such they signed and delivered the said instrument pursuant to authority, as their free and voluntary acts, and as the free and voluntary acts and deeds of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21st day of April, 1993.

[Signature]
Notary Public

(SEAL)



501220634

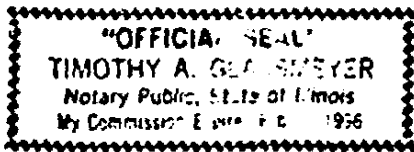
UNOFFICIAL COPY

STATE OF ILLINOIS)
COUNTY OF Cook) SS.

I, Timothy A. Glessmeyer, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donald L. Stephens and Stephen M. Wolfe, personally known to me to be the Vice Presidents and Vice Presidents of The Northern Trust Company are the same persons whose names are subscribed to the foregoing instrument as such Donald L. Stephens and Stephen M. Wolfe of said Bank, appeared before me this day in person and acknowledged that as such they signed and delivered the said instrument pursuant to authority, as their free and voluntary acts, and as the free and voluntary acts and deeds of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 26th day of February, 1993.

Timothy A. Glessmeyer
Notary Public



(SEAL)

501220694