

# UNOFFICIAL COPY

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THIS INSTRUMENT PREPARED BY AND SHOULD BE RETURNED TO:

Lorraine Zabrycky - Suite 2820  
222 South Riverside Plaza  
Chicago IL 60606-6201

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## MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (this "Agreement") made this 30th day of April, 1993, by, between and among First Colonial Trust Company, an Illinois banking corporation, as Successor Trustee to Michigan Avenue National Bank, a national banking association, not personally or individually, but solely as Trustee under Trust Agreement dated January 23, 1969 and known as Trust No. 1516 ("Borrower") and United of Omaha Life Insurance Company, a Nebraska corporation ("Lender").

### WITNESSETH:

WHEREAS, Borrower is indebted to Lender under a certain Mortgage Note dated February 28, 1986, originally written in the principal amount of \$2,500,000.00 ("Note"); and

WHEREAS, Note is secured by a Mortgage dated February 28, 1986 and recorded March 13, 1986 in the Office of the Recorder of Cook County, Illinois, as Document No. 86100796 ("Mortgage"), covering the following described real estate:

See Exhibit "A" which, by this reference, is incorporated herein ("Mortgaged Real Estate"); and

WHEREAS, Note is further secured by an Assignment of Rents dated February 28, 1986 and recorded March 13, 1986 in the Office of the Recorder of Cook County, Illinois, as Document No. 86100797 ("Assignment of Rents"); and

WHEREAS, Note is further secured by an Assignment of Lessor's Interest in Leases dated February 28, 1986 and recorded March 13, 1986 in the Office of the Recorder of Cook County, Illinois, as Document No. 86100798 ("Assignment of Leases"); and

WHEREAS, Note is further secured by a UCC-1 Financing Statement by, and between Borrower, as "Debtor", and Lender as "Secured Party", filed on March 14, 1986 with the Recorder of Deeds of Cook County, Illinois as Document No. 07521 ("Financing Statement"); and

WHEREAS, Note is further secured by a Security Agreement dated February 28, 1986, by and between Borrower and Lender ("Security Agreement"); and

WHEREAS, Note is further secured by an Agreement Modifying Note and Mortgage and Supplement to Mortgage dated August 1, 1991 ("Modification Agreement"); and

WHEREAS, Note is further secured by a Guaranty dated August 29, 1991, by and between Lender and C. Philip Smiley as "Guarantor" ("Guaranty"); and

WHEREAS, Note is further secured by the real estate located in Cook County, Illinois legally described on Exhibit "B", that was subsequently added to and held as part of the Mortgaged Real Estate; subject to all of the terms and conditions of the Loan Documents (as defined herein); and

WHEREAS, Note is further secured by all other written documents and agreements ("Other Loan Documents") securing or otherwise entered into or given in connection with Note or the loan transaction of which Note forms a part ("Loan"); and

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WHEREAS, Borrower now requests Lender's consent to modify (as described below) certain terms of the Note, Mortgage, Assignment of Rents, Assignment of Leases, Financing Statement, Security Agreement, Modification Agreement, Guaranty and Other Loan Documents; including all modifications, extensions, continuations, and amendments to any of the foregoing (collectively with this Agreement, "Loan Documents"); and

WHEREAS, Lender will give its consent to such modifications subject to certain conditions.

NOW THEREFORE, in consideration of Lender's agreement to give its consent and other good and valuable consideration, the receipt of which is hereby acknowledged; it is hereby agreed by Borrower and Lender as follows:

1. Lender hereby gives its consent to the following modifications of Loan Documents, and only if, this Agreement is fully and validly executed; the representations, warranties and guarantees herein are true and continuously remain true; and the terms and conditions herein are fully performed by the parties. Should the preceding conditions not be fully performed, Lender's consent, at its option, shall be null and void, ab initio.

2. Loan Documents are hereby modified as follows:

a. The loan balance as of May 1, 1993 is \$2,152,209.50.

b. Commencing May 1, 1993, the Note shall have a fifteen (15) year amortization.

c. The principal of and accrued interest on the outstanding balance due under the Note shall be repaid in equal monthly installments of \$22,473.91 and shall be due and payable on the first day of June, 1993, and on the first day of each succeeding month. A final payment shall be paid on the date the Note matures, whether by acceleration, prepayment or otherwise, equal in amount to the outstanding principal balance of the Note, plus any accrued and unpaid interest thereon.

3. Borrower and Lender agree that the Note shall continue to bear interest at a rate equal to 9.5% per annum, and that the maturity date of the Note shall remain as August 1, 1994.

4. Borrower agrees that on the first day of each calendar month, Borrower shall deposit with Lender a non-interest-bearing amount equal to one-twelfth of the estimated aggregate annual insurance premiums on all policies of insurance required by Lender and one-twelfth of the annual Impositions (as defined herein) estimated by Lender to be next due on the Mortgaged Real Estate. Such deposits are hereby pledged as additional security for the indebtedness and the obligations secured by the Mortgage. Borrower further agrees to cause all bills, statements or other documents relating to the foregoing Impositions to be sent or mailed directly to Lender. Upon receipt of such bills, statements or other documents, and provided Borrower has deposited sufficient funds pursuant to this Section 4, Lender shall pay such amounts as may be due out of the funds so deposited. If at any time and for any reason the funds so deposited are or will be insufficient to pay such amounts as may then or subsequently be due, Lender shall notify Borrower; and Borrower shall immediately deposit an amount equal to such deficiency with Lender. Notwithstanding the foregoing, nothing contained herein shall cause Lender to be deemed a trustee of such funds or to be obligated to expend any amounts in excess of the amount of funds so deposited, pursuant to this Section 4. If Borrower fails to deposit sufficient sums pursuant to this Section 4, Lender may, at Lender's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Lender upon demand, or at the option of Lender, Lender may, without making any advance whatever, apply any sums held by it upon the indebtedness and the obligations secured by the Mortgage. "Impositions" is defined as all

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real property taxes and assessments, general and special, and all other fees, taxes and assessments of any kind or nature whatsoever, which are assessed or imposed upon the Mortgaged Real Estate, or become due and payable, and which create a lien upon any part of the Mortgaged Real Estate, or any part thereof, or which are imposed upon Lender's interest in the Mortgaged Real Estate.

5. Prior to execution of this Agreement, Borrower shall provide Lender with satisfactory documentation evidencing: a) the power and authority of Borrower to enter into and perform this Agreement and modification transaction, b) the power and authority of Borrower's undersigned signatories to enter into and perform this Agreement and modification transaction on behalf of and binding upon Borrower and c) no changes in Borrower's organizational structure since original Loan Document execution and Loan closing.

6. Prior to execution of this Agreement, Borrower shall provide Lender with satisfactory documentation evidencing the acceptable financial condition of Borrower and of the Mortgaged Real Estate.

7. Prior to execution of this Agreement, Borrower shall provide Lender with a satisfactory commitment for an Endorsement to Lender's title insurance policy committing to insure that Lender's liens on Mortgaged Real Estate are first and prior liens with no Exceptions or Exclusions other than those shown on Lender's original title insurance policy and despite the modification of Loan Documents and recordation of this Agreement reflecting such modification.

8. As soon as possible and, in no case exceeding fifteen days after execution of this Agreement, Borrower shall provide Lender with the title insurance policy Endorsement described in the preceding Paragraph 7.

9. Borrower represents and warrants that on the date of this Agreement, Loan Documents are current in all respects and no Events of Default exist thereunder. Borrower further represents and warrants that no amendments or other modifications have been made to the original Loan Documents.

10. All costs and expenses incurred in connection with this modification transaction; including, but not limited to, title insurance costs (including both the above-described title insurance commitment and title insurance Endorsement), attorneys' fees, documentary stamps, recording costs, etc., will be paid by Borrower.

11. Notwithstanding anything to the contrary, if the terms and provisions contained in any other Loan Document in any way conflict or are inconsistent with the terms and provisions of this Agreement, the terms and provisions of this Agreement shall govern and supersede. However, it is specifically agreed that all terms and provisions contained in any other Loan Document which do not conflict or are not inconsistent with this Agreement shall remain in full force and effect without any change or modification. If any term or condition of this Agreement conflicts with applicable law or is held to be invalid or unenforceable by a court of competent jurisdiction, the other terms and conditions of this Agreement shall remain in full force and effect.

12. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties.

13. The individuals signing on behalf of the undersigned parties, by their signatures, personally represent and warrant that they are fully authorized and empowered to enter into on behalf of and to fully bind the respective parties on whose behalf they are signing this Agreement and further represent and warrant that such parties are fully authorized and empowered to enter into and perform this Agreement.

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IN WITNESS WHEREOF, this Modification Agreement has been executed by the parties hereto as of the day and year first above written.

**BORROWER:**

First Colonial Trust Company as Successor Trustee to Michigan Avenue National Bank, not personally or individually, but solely as Trustee under Trust Agreement dated January 23, 1969 and known as Trust No. 1516

By Joseph C. Nagels  
Lead Trust Officer  
Attest Virginia D. Sage  
Lead Trust Officer

EXCULPATORY CLAUSE ATTACHED HERETO  
AND MADE A PART HEREOF.

**LENDER:**

United of Omaha Life Insurance Company,  
a Nebraska corporation

By Edward R. Steff  
Attest Edna H. Harrison

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This document is executed by FIRST COLONIAL TRUST COMPANY, not personally but as Trustee under Trust No. 13/6 as aforesaid, in the exercise of power and authority conferred upon and vested in said Trustee as such, and it is expressly understood and agreed that nothing in said document contained shall be construed as creating any liability on said Trustee personally to pay any indebtedness accruing thereunder, or to perform any covenants, either expressed or implied, including but not limited to warranties, indemnifications, and hold harmless representations in said document (all such liability if any, being expressly waived by the parties hereto and their respective successors and assigns) and that so far as said Trustee is concerned, the owner of any indebtedness or right accruing under said document shall look solely to the premises described therein for the payment or enforcement thereof, it being understood that said Trustee merely holds legal title to the premises described therein and has no control over the management thereof or the income therefrom, and has no knowledge respecting any factual matter with respect to said premises, except as represented to it by the beneficiary or beneficiaries of said trust. In event of conflict between the terms of this rider and of the agreement to which it is attached, on any questions of apparent liability or obligation resting upon said trustee the provisions of this rider shall be controlling.

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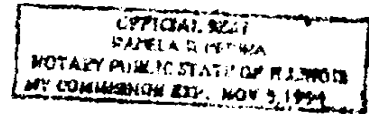
STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

I, the undersigned, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify Joyce A. Madgen, as Land Trust Officer of First Colonial Trust Company, an Illinois corporation, and Virginia L. Doyle, as Land Trust Officer of said Company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, as such Land Trust Officer, and Land Trust Officer, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instruments as their free and voluntary act, and as the free and voluntary act of said Company, for the uses and purposes therein set forth including the waiver of right of homestead and of any and all rights of redemption from sale under any order or decree foreclosing this mortgage, and the said Land Trust Officer did also then and there acknowledge that he, as custodian of the corporate seal of said Company, did affix the said corporate seal of said Company to said instrument as his own free and voluntary act, and as the free and voluntary act of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 24th day of May, 1993.

Pamela Medina  
Notary Public

My commission expires: \_\_\_\_\_



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

I, Beulah M. Heidvogel, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify Edward R. Stella, as Asst. Vice President of United of Omaha Life Insurance Company, a Nebraska corporation, and Edwin H. Garrison, as Asst. Secretary of said Company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, as such Edward R. Stella, and Edwin H. Garrison, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their free and voluntary act of said Company, for the uses and purposes therein set forth, and the said Assistant Secretary did also then and there acknowledge that he, as custodian of the corporate seal of said Company did affix the said corporate seal of said Company to said instrument as his own free and voluntary act, and as the free and voluntary act of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 26th day of April, 1993.

Beulah M. Heidvogel  
Notary Public

My commission expires: \_\_\_\_\_



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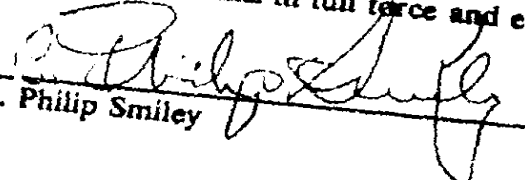
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## CONSENT OF GUARANTOR

The undersigned executed a Personal Guaranty dated August 29, 1991 in connection with the Loan described in the above Modification Agreement. I hereby consent to this Modification Agreement and my Personal Guaranty remains in full force and effect.

  
C. Philip Smiley

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## EXHIBIT "A"

### PARCEL 1:

Lots 2 and 3 in Paus Subdivision of Lot 7 in C.V. Dyer's Subdivision of that part of Lots 6, 7 and 8 lying West of Lake Shore Park Road in Steele's and Bickerdike's Subdivision in the West half of the North West quarter of Section 28, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Tax No.: 14-28-120-030

Also

### PARCEL 2:

Lots 1 to 4 inclusive in owner's division of Lot 1 in Paus Subdivision of Lot 7 in C.V. Dyer's Subdivision of that part of Lots 6, 7 and 8 lying West of Lake Shore Plank Road in Steele's and Bickerdike's Subdivision in the West half of the North West quarter of Section 28, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Tax No.: 14-28-120-029

Commonly known as North Corner Broadway and Clark, Chicago, Illinois.

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## EXHIBIT "B"

The South 1/2 of the vacated 12 foot alley lying North of and accruing to the West 85.74 feet of Lot 3 in Owner's Division of Lot 1 in Paus Subdivision of Lot 7 in C.V. Dyer's Subdivision of that part of Lots 6, 7 and 8 lying West of Lake Shore Plank Road in Steele's and Bickerdike's Subdivision in the West 1/2 of the North West 1/4 of Section 28, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

**Street Address:** South half of vacant alley running northeasterly from North Clark Street behind the premises commonly known as the north corner of North Clark Street and Broadway, Chicago, Illinois.

Permanent Tax No.: 14-28-120-029

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