

UNOFFICIAL COPY

93539818

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN
TO:

Scott L. Glickson
444 N. Michigan Avenue, 36th Floor
Chicago, Illinois 60611

ADDRESS OF THE PREMISES:
4850 South Kilbourn
Chicago, Illinois

P.I.N.: 19-10-104-027-0000

P.I.N.: 19-10-104-028-0000

MODIFICATION AGREEMENT

This Modification Agreement is made as of June 30, 1993, to be effective July 1, 1993, among American National Bank and Trust Company of Chicago, not personally but solely as Trustee under a Trust Agreement, dated November 6, 1978, and known as Trust Number 45193 ("Borrower"), whose address is c/o Joel S. Hirsch, Suite 640, 135 South LaSalle Street, Chicago, Illinois 60603, Joel S. Hirsch, whose address is Suite 640, 135 South LaSalle Street, Chicago, Illinois, 60603 ("Hirsch") and LaSalle National Bank ("Lender"), with an office at 120 South LaSalle Street, Chicago, Illinois 60603.

This Agreement is based on the following recitals:

A. On August 25, 1992, for full value received, Borrower executed and delivered to Lender its Mortgage Note (the "Note") in the principal sum of \$1,050,000 to evidence an indebtedness to Lender (the "Mortgage Loan"), and secured the payment of the Note by granting to Lender, among other things, a Mortgage (the "Mortgage"), dated the same as the Note, and covering certain real property located in the County of Cook, State of Illinois, which property is described in Exhibit "A", which is attached to and made a part of this Agreement. The Mortgage was recorded on August 27, 1992, as Document No. 92637094, in the office of the Cook County Recorder of Deeds.

B. Borrower has requested that certain modifications be made in the Note and Mortgage and Lender has agreed to make such modifications subject to the certain conditions set forth below.

C. Unless otherwise defined herein, capitalized terms used in this Modification Agreement shall have the meanings given to such terms in the Mortgage and Note.

D. The Outstanding Principal Balance of the Note as of the date hereinabove set forth is \$1,050,000.

Accordingly, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties do mutually agree that the Note and Mortgage are, effective immediately, modified as follows:

BOX 333

DI 7373 859

41
J

93539818

UNOFFICIAL COPY

7 1 5 3 2 3 1

I. MODIFICATION OF THE NOTE

1.1 Paragraph 1.2 of the Note is deleted and replaced with the following: "Default Rate" shall mean 10.75 percent per annum, but not in excess of the maximum interest rate permitted by law.

1.2 Paragraph 1.3 of the Note is deleted and replaced with the following: "Interest Rate" shall mean 8.25 percent per annum;

1.3 Paragraph 1.5 of the Note is deleted and replaced with the following: "Maturity Date" shall mean July 1, 2003;

1.4 Paragraph 1.8 of the Note is deleted and replaced with the following: "Payment Date" shall mean the first day of August, 1993 and the first (1st) day of each month thereafter during the term hereof.

1.5 Subparagraphs (a) and (b) of Paragraph 2.1 of the Note are deleted and replaced with the following: Borrower shall pay the Original Principal Amount and interest on the balance of the Original Principal Amount remaining from time to time unpaid at the Interest Rate in installments (including principal and interest) as follows: \$8,946.69 on the first day of August, 1993 and \$8,946.69 on the first day of each month thereafter until this Note is fully paid except that the final payment of the Outstanding Principal Balance and any interest thereon, if not sooner paid, shall be due on the Maturity Date (or on the first business day thereafter if such day is not a business day), unless due and payable earlier by reason of the accumulation of the maturity of the Note.

1.6 Paragraph 2.2 of the Note is deleted and replaced with the following:

Prepayment Privileges.

(a) Provided that no event of Default exists under this Note, Borrower may voluntarily prepay the Outstanding Principal Balance in whole at any time on or after the date hereof, subject to the following conditions:

(i) Not less than 14 days prior to the date upon which Borrower desires to make such prepayment, Borrower shall deliver to Lender written notice of its intention to prepay, which notice shall be irrevocable and state the prepayment amount and the prepayment date;

(ii) Borrower shall pay to Lender, concurrently with such prepayment, a prepayment premium (the "Prepayment Premium") equal to

UNOFFICIAL COPY

the greater of (A) the Yield Amount (as hereinafter defined) or (b) the Fixed Amount (as hereinafter defined);

(iii) Borrower shall pay to Lender all accrued and unpaid interest through the date of such prepayment on the Outstanding Principal Balance being prepaid; and

(iv) Borrower shall pay to Lender any other obligations of Borrower to Lender then due which remain unpaid.

Notwithstanding the foregoing, no Prepayment Premium shall be owing if such prepayment is made on or after July 1, 2002.

(b) Borrower acknowledges that the Mortgage Loan was made on the basis and assumption that Lender would receive the payments of principal and interest set forth herein for the full term hereof. Therefore, whenever the maturity hereof has been accelerated by Lender by reason of the occurrence of any event of Default under this Note or the Mortgage or any other of the Loan Documents, including an acceleration by reason of sale, conveyance, further encumbrance or other default, the Prepayment Premium shall be due, in addition to the Outstanding Principal Balance, accrued interest and other sums due hereunder.

(c) For purposes of this Note, the "Fixed Amount" shall mean 1% of the amount prepaid.

(d) For purposes of this Note, the "Yield Amount" shall be the amount calculated as follows:

(i) There shall first be determined, as of the date fixed for prepayment (the "Prepayment Date"), the amount, if any, by which the Interest Rate exceeds the yield to maturity percentage (the "Current Yield") for the United States Treasury Note closest in maturity to the Maturity Date (the "Treasury Note") as published in The Wall Street Journal on the fifth business day preceding the Prepayment Date. If (A) publication of The Wall Street Journal is discontinued, or (B) publication of the Current Yield of the Treasury Note in The Wall Street Journal is discontinued, Lender, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to be used to determine the Current Yield;

(ii) The difference calculated pursuant to clause (i) above shall be multiplied by the Outstanding Principal Balance as of the Prepayment Date;

UNOFFICIAL COPY

(iii) The product calculated pursuant to clause (ii) above shall be multiplied by the quotient, rounded to the nearest one-hundredth of one percent, obtained by dividing (A) the number of days from and including the Prepayment Date to and including the Maturity Date, by (B) 365; and

(iv) The sum calculated pursuant to clause (iii) above shall be discounted at the annual rate of the Current Yield to the present value thereof as of the Prepayment Date, on the assumption that said sum would be received in equal monthly installments on each monthly anniversary of the Prepayment Date prior to the Maturity Date, with the final such installment to be deemed received on the Maturity Date;

provided that Borrower shall not be entitled in any event to a credit against, or a reduction of, the indebtedness being prepaid if the Current Yield exceeds the Interest Rate or for any other reason.

II. MODIFICATIONS OF THE MORTGAGE

2.1 Insert new sub-paragraph 15.4 to the Mortgage which shall provide the following: Notwithstanding anything to the contrary contained in Paragraphs 15 or 16 of the Mortgage, transfers of interests in the Mortgaged Premises or in G Limited Partnership to members of the family of Joel S. Hirsch or to the Joel S. Hirsch Foundation for estate planning purposes shall be permitted so long as Joel S. Hirsch continues to exercise primary managerial control over the leasing and operation of the Mortgaged Premises.

2.2 Insert new sub-subparagraph 16.1.1 to the Mortgage which shall provide the following: The Net Cash Flow (as hereinafter defined) received by Mortgagor from the operation of the Mortgaged Premises during any calendar quarter shall be insufficient to result in a ratio of net cash flow to debt service for such calendar quarter of less than 1.25 to 1.00. For purposes hereof, "Net Cash Flow" shall mean the amount of all cash from rentals, concessions and other sources with respect to the Mortgaged Premises (other than lease security deposits and proceeds of insurance or condemnation) received by Mortgagor less the sum of (i) all expenses incurred in respect to the operation, maintenance, repair and replacement of the Mortgage Premises, including without limitation insurance premiums, real estate tax payments and management fees, and (ii) reasonable reserve for repairs, replacements and other accrued expense items.

2.3 Insert new sub-subparagraph 16.1.2 to the Mortgage which shall provide the following: Within 30 days after the second and fourth quarter of each fiscal year of the Borrower, Borrower shall provide Lender operating statements on the Premises prepared in conformity with generally accepted accounting principles applied on a basis

UNOFFICIAL COPY

consistent with prior periods, signed by a proper accounting officer or general partner of Borrower and consisting of at least (i) a current rent roll, (ii) a statement of income and expenses, (iii) a statement of capital expenditures and balance sheet; and (iv) a certificate from such officer or general partner stating that Borrower is in compliance with Paragraph 16.1.1 of this Mortgage.

III.

ADDITIONAL COVENANTS AND REPRESENTATIONS OF BORROWER

3.1 Borrower covenants and agrees to pay the balance of the indebtedness evidenced by the Note and secured by the Mortgage as modified, and to perform the covenants contained in the Mortgage as modified.

3.2 Borrower represents to Lender that there is no second mortgage or other subsequent lien now outstanding against the Premises except for real estate taxes not yet due and payable (unless disclosed to Lender and any such subsequent lienholder has agreed to consent to this Modification Agreement and subordinate its lien to the lien of the Mortgage, as modified) and that the lien of the Mortgage, as modified, is a valid, first, and subsisting lien on the Premises.

3.3 Borrower shall pay all costs incurred by Lender, including but not limited to, Lender's reasonable attorney's fees, with regard to the preparation of this Agreement and other Loan Documents.

3.4 Borrower shall pay Lender a non-refundable fee of \$3,620.00 upon full execution of this Agreement.

3.5 Borrower acknowledges that it has thoroughly read and reviewed the terms and provisions of this Agreement and is familiar with them. Borrower clearly understands the terms and provisions of this Agreement and has fully and unconditionally consented to them. Borrower has had the full benefit and advice of counsel of its own selection, or the opportunity to obtain the benefit and advice of counsel of its own selection, in regard to understanding the terms, meaning, and effect of the Agreement. Borrower's execution of this Agreement is done freely, voluntarily, with full knowledge, and without duress. In executing this Agreement, Borrower is not relying on any representations, written or oral, express or implied, made to Borrower by any party to the Agreement. Borrower acknowledges that the consideration received or to be received under this Agreement is actual and adequate.

3.6 Borrower releases and forever discharges Lender, and its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors and assigns, and all persons, firms, corporations, and organizations on its behalf, from all damage, loss, claims, demands, liabilities, obligations, actions, and causes of action of whatever kind or nature which Borrower may now have or claim to have against Lender

UNOFFICIAL COPY

as of the effective date of this Agreement, whether presently known or unknown, on account of or in any way affecting, concerning, arising out of, or founded on the Note and Mortgage, as modified by this Agreement. This includes, but is not limited to, all such loss or damage of any kind suffered or sustained prior to and including the effective date of this Agreement, and arising as a consequence of the dealings between the parties. This Agreement and covenant on the part of the Borrower is contractual, and not a mere recital. The parties acknowledge and agree that no liability whatsoever is admitted on the part of any party, except Borrower's indebtedness to Lender under the Note and Mortgage, and that all agreements and understandings between Borrower and Lender are expressed and embodied in the Note and Mortgage, as modified by this Agreement.

3.7 Nothing contained in this Agreement shall in any manner impair the Note and Mortgage, as modified, or the first lien created, or any other documents executed by Borrower in connection with the modification, or alter, waive, vary, or affect any promise, agreement, covenant, or condition recited in any of the foregoing documents, except as expressly provided in this Agreement, or affect or impair any rights, powers, or remedies of Lender under any of the foregoing documents. By executing this Agreement, Borrower hereby affirms and ratifies the Note, Mortgage and other Loan Documents, and except as otherwise provided, all terms and provisions of the Note, Mortgage, and other Loan Documents executed in connection with the Mortgage Loan shall remain in full force and effect and shall be binding on the parties, their successors, and assigns.

IV. COVENANTS OF HIRSCH

4.1 Within 30 days after each December 31 during the term of the Note, Hirsch shall provide Lender with a personal financial statement including a statement of income and expenses and a statement of assets and liabilities, in form and substance reasonably satisfactory to Lender.

4.2 Hirsch, a general partner of the beneficiary of the Borrower, and having a financial interest in the beneficiary of the Borrower, hereby affirms and ratifies all the Loan Documents and personally affirms and ratifies the Guaranty dated August 25, 1992, made by him for the benefit of Lender.

UNOFFICIAL COPY

V. DEFAULT

5.1 Any default or breach of the representations, warranties or covenants contained in this Agreement shall be deemed a Default under the Mortgage.

VI. GENERAL

6.1 This Modification Agreement is executed by the undersigned, 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 in its individual capacity that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Trustee personally to pay the Note or any Loan Document.

This instrument is executed by the undersigned Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. It is further understood and agreed that the Trustee merely holds title to the property herein described and has no agents, employees or control over the management of the property and no knowledge of other factual matters except as represented to it by the beneficiary(ies) of the Trust. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument, all such liability being expressly waived by every person now or hereafter claiming any right or security hereunder, and the owner of any indebtedness or cause of action for breach of any warranty, indemnity, representation, covenant, undertaking or agreement accruing hereunder shall look solely to the Trust estate for the payment thereof.

[Signature Page to Follow]

UNOFFICIAL COPY

7 2 3 9 1 1

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

LaSalle National Bank

American National Bank and Trust Company of Chicago, not personally but solely as Trustee as aforesaid

By: Matthew J. Narki

By: [Signature] **MR. MICHAEL WIELAN**

Printed Name: MATTHEW J. NARKI

Printed Name: _____

Title: ASSISTANT VICE PRESIDENT

Title: VP

Joel S. Hirsch

ATTEST

[Signature]

[Signature] Gregory S. Kasprzyk

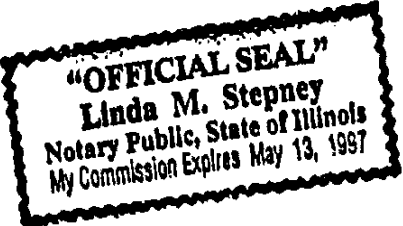
Printed Name: _____

Title: ASSISTANT SECRETARY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, LINDA M. STEPNEY a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Joel S. Hirsch, 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 they signed and delivered said instrument as his own free and voluntary act.

GIVEN under my hand and Notarial Seal, this 6th day of July, A.D., 1993.



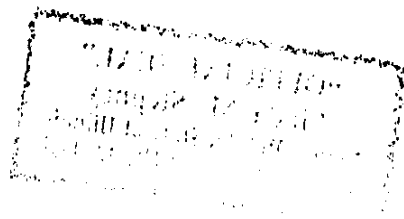
Linda M. Stepney
Notary Public

My Commission expires: 5/13/97

93539818

UNOFFICIAL COPY

Property of Cook County Clerk's Office



63000000

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, LAURA KUMINGO, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that J. MICHAEL WICKLIAN President of American National Bank and Trust Company of Chicago, and Gregory S. Kasprzyk Secretary of said corporation, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument and as such, VICE President and ASSISTANT Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own 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 Notarial Seal, this day of JUL 07 1993,
A.D., 1993.

Laura Kumingo
Notary Public

My Commission expires:



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

The South 417 feet of the North 1358 feet of the two following described parcels of real property, taken as a single tract:

Parcel 1: The West Half of the East Half of the Northwest Quarter of Section 10, Township 38 North, Range 13, East of the Third Principal Meridian, (except from the above described parcel the South 1040 feet and the West 333 feet thereof).

Parcel 2: An irregular parcel of land in the East Half of the Northwest Quarter of Section 10, Township 38 North, Range 13, East of the Third Principal Meridian, described as follows: commencing at a point on the North line of said Northwest Quarter 333 feet East of the West line of the East Half of said Northwest Quarter; Thence Southerly on a line 333 feet East of and parallel with said West line a distance of 1809.50 feet; Thence Northwesterly making an angle to the Northwest of 45° a distance of 203.01 feet to a point 189.45 feet East of the West line of said East Half of the Northwest Quarter; Thence continuing Northwesterly on a curved line, convex to the Southwest and tangent to the last described course, having a radius of 299.57 feet an arc distance of 199.52 feet to a point which is 103.84 feet East of said West line of the East Half of the Northwest Quarter; Thence Northwesterly tangent to the last described curve a distance of 175 feet to a point which is 83 feet East of the said West line of the East Half of the Northwest Quarter; Thence Northerly on a line 83 feet East of and parallel with the said West line a distance of 1316.82 feet, more or less, to a point on the North line of said Northwest Quarter; Thence East along said North line a distance of 250 feet to the place of beginning (except therefrom that part thereof which lies South of the North line of the South 1040 feet of said East Half of the Northwest Quarter of said Section 10) all in Cook County, Illinois.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000