

# UNOFFICIAL COPY

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HSS:JL  
12/16/93

## FOURTH NOTE, MORTGAGE AND LOAN AGREEMENT MODIFICATION AGREEMENT

THIS FOURTH NOTE, MORTGAGE AND LOAN AGREEMENT MODIFICATION AGREEMENT (the "Agreement") dated as of the 1st day of December, 1993, by and between Boulevard Bank National Association, a national banking association, not personally but solely as Trustee under Trust Agreement dated January 25, 1989 and known as Trust No. 8927 ("Trustee") with a mailing address of 400 North Michigan Avenue, 2 South, Chicago, Illinois 60611, Tamerlane Associates Limited Partnership, an Illinois limited partnership ("Beneficiary," and together with Trustee, the "Borrower"), with a mailing address of c/o Ruttenberg & Ruttenberg, 325 West Huron Street, Suite 806, Chicago, Illinois 60610 and LaSalle National Bank, a national banking association previously known as Exchange National Bank of Chicago ("Lender"), with a mailing address of 120 South LaSalle Street, Chicago, Illinois 60603.

DEPT-01 RECORDING \$41.50  
T0000 TRAM 6396 02/01/94 12:36:00  
W J D N E S S E T H L \$4470 \$ \*-94-103915  
COOK COUNTY RECORDER

WHEREAS, on or about December 7, 1989, Lender made a loan (the "Loan") to Borrower in the aggregate amount of Eight Million Four Hundred Thousand and no/100ths (\$8,400,000.00) for the purchase and development with a townhouse project of certain property located at 2701 North Greenview and West Wrightwood Avenues, Chicago, Illinois and legally described in Exhibit "A" attached hereto (the "Premises");

WHEREAS, to evidence the Loan, Borrower executed and delivered to Lender (a) a Land Acquisition Promissory Note payable to Lender dated December 1, 1989 in the principal amount of \$2,400,000.00 ("Land Acquisition Note") and (b) a Land

This instrument prepared by and after recording return to:

Michael S. Kurtzon  
Miller, Shakman, Hamilton  
Kurtzon & Schlifke  
208 South LaSalle Street  
Suite 1100  
Chicago, Illinois 60604

Permanent Index Nos.

14-29-302-110 through 158

Address of Premises:

2701 North Greenview  
Chicago, Illinois

94103915

Handwritten mark/initials

Handwritten mark/initials

Handwritten mark/initials  
4150

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Acquisition and Revolving Credit Promissory Note payable to Lender dated December 1, 1989 in the principal amount of \$6,000,000.00 ("Promissory Note") (the Land Acquisition Note and Promissory Note are hereinafter sometimes referred to as the "Original Notes");

WHEREAS, the Original Notes were secured by (a) a certain Construction Mortgage and Security Agreement With Assignment of Rents dated as of December 1, 1989 executed by Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office") on December 7, 1989 as Document No. 89584449 (the "Original Mortgage"), and (b) a certain Assignment of Leases and Rents dated as of December 1, 1989 and recorded in the Recorder's Office on December 7, 1989 as Document No. 89584450 (the "Original Assignment of Leases and Rents");

WHEREAS, the Original Notes were issued pursuant to a Construction Loan Agreement dated as of December 1, 1989 between Borrower and Lender (the "Original Loan Agreement" and with the Original Notes, Original Mortgage, Original Assignment of Leases and Rents and any and all other documents securing the Loan, the "Original Loan Documents");

WHEREAS, the Original Loan Documents were amended by (a) a Note, Mortgage and Loan Agreement Modification Agreement dated March 1, 1991 and recorded in the Recorder's Office as Document No. 91130422 (the "First Amendment"); (b) a Second Note, Mortgage and Loan Agreement Modification Agreement dated September 25, 1991 and recorded in the Recorder's Office as Document No. 91616963 (the "Second Amendment"); and (c) a Third Note, Mortgage and Loan Agreement Modification Agreement dated November 17, 1992 and recorded in the Recorder's Office as Document No. 92913125 (the "Third Amendment") (the Original Loan Documents, as so amended, are referred to herein, respectively, as the "Mortgage", "Assignment of Rents" and "Loan Agreement" and collectively, the "Loan Documents");

WHEREAS, the Third Amendment, *inter alia*, (a) decreased the amount of the Promissory Note to \$4,817,400 and eliminated Borrower's right to re-borrow and Lender's obligation to re-disburse under the Promissory Note, (b) provided for execution of a promissory note in the principal amount of \$4,350,000.00 (the "Phase Three Note", and with the Original Notes as amended, the "Notes") to evidence an increase in the amount of the Loan made to finance construction of homes and improvements in Phase Three of the Project, (c) provided for the cancellation of the Phase Two Note, (d) extended the Maturity Dates of the Original Notes to December 1, 1993 and (e) imposed certain conditions in respect to the development of Phase Three of the Project;

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WHEREAS, the Maturity Date of the Phase Three Note is December 1, 1993;

WHEREAS, Borrower has requested that Lender extend the maturity dates of the Notes to June 1, 1994; and

WHEREAS, subject to fulfillment of the conditions set forth herein, lender is prepared to so extend the Maturity Dates.

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties, and for other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged by Borrower, it is hereby agreed as follows:

1. The foregoing recitals are hereby incorporated by this reference into this Agreement. All defined terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

2. The Mortgage is amended to provide that the maturity dates of the \$6,250,000.00 Land Acquisition and Revolving Credit Promissory Note and the \$3,400,000.00 Land Acquisition Promissory Note are hereby extended from December 1, 1993 to June 1, 1994.

3. The Land Acquisition and Revolving Credit Promissory Note is hereby amended to change the maturity date thereof from December 1, 1993 to June 1, 1994.

4. The Promissory Note is hereby amended to change the maturity date thereof from December 1, 1993 to June 1, 1994.

5. The Phase Three Note is hereby amended to change the maturity date thereof from December 1, 1993 to June 1, 1994.

6. The Loan Agreement is amended as follows:

The definition of Due Date in Section 2.1 of the Loan Agreement is hereby amended to read as follows:

"DUE DATE - June 1, 1994 as to the Land Acquisition and Revolving Credit Promissory Note, the Land Acquisition Promissory Note and the Phase Three Note."

7. The modifications provided for in this Agreement shall be effective only upon fulfillment of the following conditions by Borrower:

(a) Issuance by the Title Insurer of an endorsement (dated as of the date of recording of this Agreement) to the loan policy previously issued to Lender dated December 7, 1989 and bearing Policy No. N890599 insuring Lender that the Mortgage, as amended

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hereby, constitutes a valid first lien on the Premises, subject only to the Permitted Exceptions and liens over which the Title Insurer has insured by endorsements satisfactory to Lender and reinsured by First American Title Insurance Company of California;

(b) Delivery to Lender of an opinion of counsel for Borrower satisfactory to Lender;

(c) Delivery to Lender of a Reaffirmation of Guaranty satisfactory to Lender;

(d) Delivery to Lender of all other documents and instruments as Lender shall reasonably require in respect to the transactions contemplated by this Agreement.

8. Contemporaneously with the execution and delivery hereof, Borrower shall pay or cause to be paid all closing costs and expenses, including the fees of Lender's attorneys, incurred in connection with the transactions contemplated herein.

9. Borrower hereby acknowledges that (i) as of the date hereof Borrower has no defense, offset or counterclaim with respect to the payment of any sum owed to Lender, or with respect to any covenant in the Loan Documents; (ii) Borrower hereby remakes and ratifies all representations, warranties and agreements made by it in and upon the execution and delivery of the Notes and other Loan Documents; (iii) Lender, on and as of the date hereof, has fully performed all obligations to Borrower and Beneficiary which it may have had or has on and as of the date hereof; (iv) by entering into this Agreement, Lender does not waive any condition or obligation in the Loan Documents.

10. Nothing herein contained shall impair the Notes or other Loan Documents in any way nor alter, waive, annul, vary nor affect any provision, condition or covenant herein contained except as expressly herein provided nor affect or impair any right, power or remedy of Lender, it being the intention of the parties hereto that the terms and provisions of the Notes and other Loan Documents shall continue in full force and effect except as expressly modified in connection herewith.

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

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

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13. This Agreement is executed by Boulevard Bank National Association, 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 contained shall be construed as creating any liability on said Trustee personally to pay the Notes 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 Lender 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 the Notes and the owners or owners of any indebtedness accruing hereunder shall look solely to the Premises for the payment thereof, by the enforcement of the lien created by the Mortgage, in the manner therein and in the Notes 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.

14. Notwithstanding anything to the contrary contained herein, neither Beneficiary nor its partners shall have any personal liability for the obligation to pay any principal, interest or other sums payable under this instrument or for the obligation to observe, perform or discharge any of the terms, covenants or conditions contained in this instrument, and (a) no attachment, execution, writ or other process shall be sought and no judicial proceeding shall be initiated by or on behalf of the Lender against Beneficiary or its partners personally as a result of a breach or default under this instrument unless such attachment, execution, writ or judicial proceeding shall be necessary to enforce any of the rights, remedies or recourses of the Lender against or with reference to the Project; and (b) in the event that any suit is brought under this instrument whether before or after the maturity by acceleration, by passage of time or otherwise, any judgment obtained in or as a result of such suit shall be enforceable and/or enforced solely against the Project; provided, however, that the Lender shall have full recourse against Beneficiary and Beneficiary and its general partners shall be personally liable for and will promptly account to Lender for all rents, issues, profits and income derived from the Project that accrue from and after the occurrence of an event of default under the Notes, the Mortgage or any document securing the obligations of the Borrower under this instrument and received by Beneficiary and not properly expended by Beneficiary in connection with the operation of the Project. Nothing herein contained shall be construed to: (1) be a release or impairment of the indebtedness secured by the Mortgage; (2) prevent Lender from exercising and enforcing, consistent with the provisions of this section, any other remedy allowed at law or in equity or by any statute or by the terms of the Notes, this instrument or

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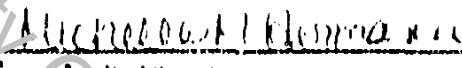
other documents securing Beneficiary's obligations under this instrument; (3) prevent Lender from enforcing the guaranty required hereunder or other available remedy against Beneficiary for any separate certificate, indemnity agreement, bond guaranty, assignment or affidavit executed in connection with the Beneficiary's obligations under this instrument; (4) prevent Lender from recovering any funds, damages or costs (including, without limitation, legal expenses) incurred by the Lender as a result of any deliberate, intentional or willful action taken in bad faith or as a result of fraud or a misrepresentation made in bad faith of facts known by Beneficiary by or on behalf of Beneficiary; (5) prevent Lender from recovering, from any person or entity receiving or holding such proceeds, funds or payments, and condemnation or insurance proceeds, or other similar funds or payments attributable to the Project, which under the terms of this instrument or any of the other documents securing the Beneficiary's obligations under this instrument should have been, but were not, paid to the Lender.

IN WITNESS WHEREOF, the undersigned have caused these presents to be signed as of the day and year first above written.

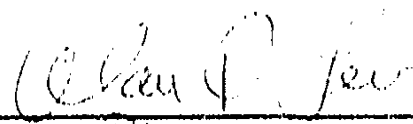
ATTEST:

By:   
Its: Asst. Vice President

BOULEVARD BANK NATIONAL  
ASSOCIATION, not personally  
but solely as Trustee as  
aforesaid

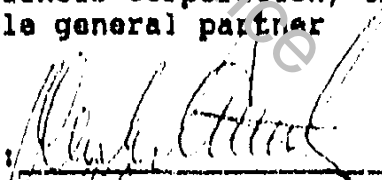
By:   
Its: Asst. Vice President

ATTEST:

By:   
Its: we

TAMERLANE ASSOCIATES LIMITED  
PARTNERSHIP, an Illinois  
limited partnership

By: Balgravia Group Ltd., an  
Illinois corporation, the  
sole general partner

By:   
Its: we

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ATTEST:

LASALLE NATIONAL BANK

By: Kenneth J. J. [Signature]  
Its: Commercial Banking Officer

By: [Signature]  
Its: Assistant Vice President

Property of Cook County Clerk's Office

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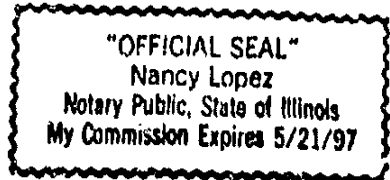
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK )

I, Nancy Lopez, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michelle Hermann, personally known to me and known by me to be the Asst. Vice President of BOULEVARD BANK NATIONAL ASSOCIATION, a national banking association, having trust power, and JACK P. O'CONNOR, personally known to me to be the Asst. Vice President Secretary of said association, 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 Asst. Vice President and Asst. Vice President Secretary of said association as Trustee as aforesaid, and caused the seal of said association to be affixed thereto, pursuant to authority given by the Board of Directors of said association, as their free and voluntary act, and as the free and voluntary act and deed of said association, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN, under my hand and Notarial Seal this 25th day of December, 1993.

(NOTARY SEAL)



Nancy Lopez
Notary Public
My Commission Expires:

Notary Public's Office

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STATE OF ILLINOIS) )  
 ) SS.  
COUNTY OF COOK )

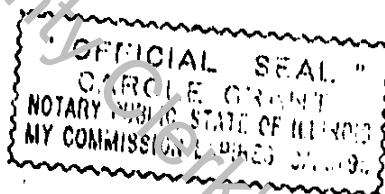
I HEREBY CERTIFY that on this 25<sup>th</sup> day of DECEMBER, 1993, before me personally appeared DAVID W. ROTISCHBERG, President and ALAN D. UV, Secretary of BELGRAVIA GROUP LTD., a corporation under the laws of the State of Illinois and the sole general partner of Tamerlane Associates Limited Partnership, an Illinois limited partnership, to me known to be the same persons who signed the foregoing instrument as their free act and deed as such officers of the corporation as the sole general partner for the use and purpose therein mentioned, and that the said instrument is the act and deed of said corporation and limited partnership.

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

(NOTARY SEAL)

Carroll Grant  
Notary Public

My Commission Expires: 9/25/95



COOK COUNTY CLERK'S Office

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I HEREBY CERTIFY that on this 23rd day of December, 1993, before me personally appeared Conetta A. Zuponi, President and Secretary of LASALLE NATIONAL BANK, a corporation under the laws of the State of Illinois to me known to be the same persons who signed the foregoing instrument as their free act and deed as such officers for the use and purpose therein mentioned, and that the said instrument is the act and deed of said corporation.

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

(NOTARY SEAL)

"OFFICIAL SEAL"  
RAE RIVERO  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 12/10/96

Rae Rivero  
Notary Public

My Commission Expires: 12/10/96

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EXHIBIT A

LEGAL DESCRIPTION

TAMERLANE SUBDIVISION

LOT 18 IN TAMERLANE SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED DECEMBER 29, 1989, AS DOCUMENT NUMBER 89614947, AND RERECORDED AS DOCUMENT NUMBER 89622232, IN COOK COUNTY, ILLINOIS.

TAMERLANE PHASE III

LOTS 16, 20 AND 21 IN TAMERLANE PHASE 3, BEING A RESUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

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