

COOK COUNTY, ILLINOIS
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MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT is entered into this 28 day of February, 1994 but effective as of February 1, 1994 ("Effective Date") by and between Cole Taylor Bank, as successor trustee to Harris Trust and Savings Bank, as Trustee under Trust Agreement dated December 21, 1989 and known as Trust No. 94642, hereinafter called "Mortgagor", and The Life Insurance Company of Virginia, a Virginia corporation, hereinafter called "Mortgagee".

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WHEREAS, Mortgagor has borrowed \$4,250,000.00 from Mortgagee as evidenced by a certain Promissory Note in such amount dated January 7, 1991 which was executed by Mortgagor's predecessor trustee and payable to Mortgagee (the "Note"), which Note is secured by (i) an Illinois Mortgage and Security Agreement of even date therewith (the "Mortgage") recorded on January 10, 1991 as Document No. 91016629 in the office of the Recorder of Deeds of Cook County, Illinois; (ii) an Assignment of Rents and Other Income recorded on the same date as Document No. 91016630 in said recording office; (iii) a UCC Financing Statement recorded on January 11, 1991 as No. 91U00713 in said recording office; (iv) a UCC Financing Statement recorded on January 11, 1991 as No. 91U00712 in said recording office; (v) a UCC Financing Statement filed on January 14, 1991 as instrument No. 2805061 in the Illinois Secretary of State's office; (vi) a UCC Financing Statement filed on January 14, 1991 as instrument No. 2805046 in the Illinois Secretary of State's office; and (vii) an Indemnity Agreement of even date with the Note from Joseph W. Bernstein (the "Beneficiary"); and

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WHEREAS, Mortgagor has also executed to or for the benefit of Mortgagee certain other documents comprising part of the "Loan Documents" as defined in the Mortgage (all of said Loan Documents being hereinafter referred to as the "Loan Documents"); and

WHEREAS, Mortgagor and Mortgagee have agreed to make certain modifications in the Loan Documents on the terms and conditions hereinafter contained; and

WHEREAS, among the modifications to the Loan Documents, Mortgagor has requested that Mortgagee extend the Maturity Date (as defined in the Note) and decrease the Regular Rate

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**This Instrument was prepared by
and after recording return to:**

Alison M. Mitchell, Esq.
Rudnick & Wolfe
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601

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BOX 333-CTE

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(as defined in the Note) and Mortgagee has consented to the aforementioned upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the sum of \$10.00, the premises and other good and valuable considerations, receipt of all of which are hereby acknowledged by the parties hereto, and as an inducement to Mortgagee to execute this Modification Agreement and agree to the aforesaid matters, the parties hereto do hereby modify the Loan Documents as hereinafter provided, and Mortgagor has mortgaged, granted, bargained, sold and conveyed and by these presents does hereby mortgage, grant, bargain, sell and convey unto the said Mortgagee, its successors or assigns, that certain piece, parcel, lot or tracts of land lying in Elk Grove Village, Illinois and more particularly described on Exhibit A attached hereto and made a part hereof, **TO HAVE AND TO HOLD** said premises, together with all the privileges and appurtenances thereto belonging, incident or appertaining thereto, unto the said Mortgagee, its successors and assigns, for the uses and purposes hereinafter limited, described and declared.

1. **AFFIRMATION OF RECITALS.** The recitals set forth above are true and correct and are incorporated herein by this reference.

2. **ACKNOWLEDGEMENT OF DEBT.** Mortgagor and Mortgagee acknowledge that, after making the February 1, 1994 payment of principal and interest due under the Note, the principal balance due under the Note is \$4,163,317.22

3. **NOTE.** As of the Effective Date, the Note is hereby amended as follows:

(a) **Monthly Payments; Extension Period.**

(i) The Regular Rate is 7.75% per annum;

(ii) The Maturity Date is February 1, 2001, and

(iii) Commencing on March 1, 1994, and on the first day of each and every month thereafter, to and including January 1, 2001 there shall be paid on account of principal and interest at the Regular Rate on the Note the sum of \$31,880.83 ("Monthly Amortizing Payment"); and on the Maturity Date, the entire outstanding principal balance of the Note, together with accrued and unpaid interest thereon, shall be due and payable.

(b) **Prepayment.** In Section 11(e) of the Note, the date "April 1, 1992" is deleted and the date "February 1, 1995" is inserted in its place.

4. **MORTGAGE.** As of the Effective Date, the Mortgage is hereby amended as follows:

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- (a) **Maturity Date.** The date the "1st day of February, 1994" in the eighth line of the first "Whereas" paragraph on page 1 of the Mortgage is deleted and the date the "1st day of February, 2001" is inserted in its place.
- (b) **Permitted Transfers.** The following paragraphs shall be added to R-2 of the Rider to Illinois Mortgage and Security Agreement:

(g) A transfer of the beneficial interest of Mortgagor by Joseph W. Bernstein to a Sub-Chapter S Corporation, the shareholders thereof being: 50% interest to Emily J. Bernstein, trustee under trust dated September 15, 1988 and known as Emily J. Bernstein Trust; 25% interest to Joseph W. Bernstein, trustee under trust dated September 15, 1988 and known as Joseph W. Bernstein Trust; 12.5% interest to Joseph W. Bernstein, trustee under trust dated September 8, 1976 and known as Amber Children Trust; and 12.5% interest to Joseph W. Bernstein, trustee under trust dated December 30, 1985 and known as Bernstein Grandchildren Trust; provided that The Emily J. Bernstein Trust is for the benefit of Emily J. Bernstein (wife of Joseph W. Bernstein); the Joseph W. Bernstein Trust is for the benefit of Joseph W. Bernstein during his lifetime, and the balance over to his wife, Emily J. Bernstein; the Amber Children Trust is for the benefit of the four (4) natural children of Joseph W. and Emily J. Bernstein; and the Bernstein Grandchildren Trust is for the benefit of the eight (8) natural grandchildren of Joseph W. and Emily J. Bernstein.

(h) Transfers, subject to the lien and security interests imposed by the Loan Documents, with notice to Mortgagee, of the Property or the beneficial interest of Mortgagor to any corporation, partnership, limited liability company, trust or other entity 100% owned and controlled by any or all of Joseph W. Bernstein, Emily J. Bernstein, his wife, or any of their siblings, children or grandchildren, or spouses of the foregoing, or trusts, partnerships, limited liability companies, corporations, or other entities owned and controlled by any of the foregoing (collectively "Bernstein Family Entities"). In addition, there shall be no restriction on the transfer of a direct or indirect interest in the Mortgagor or in any corporation, limited liability company, partnership, trust or other entity that is the beneficiary of Mortgagor, to any Bernstein Family Entity, provided, Mortgagor shall notify Mortgagee of any such transfer.

In connection with any transfer pursuant to (d), (f), (g) or (h) hereof, Mortgagor shall, at least ten (10) days prior to such transfer, deliver to Mortgagee true, correct and complete copies of any and all partnership, corporation, trust and other entity documents in order that Mortgagee may verify that said documents comply with the requirements of said subsections. In addition, within ten (10) days after Mortgagee requests, Mortgagor shall deliver

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to Mortgagee true, correct and complete copies of any and all executed and recorded (if applicable) documents evidencing such transfer(s).

- (c) **Management.** The following paragraph shall be added as R-3 to the Rider to Illinois Mortgage and Security Agreement:

R-3 Management. Throughout the term of this Mortgage, Mortgagor must select and employ professional management for the Property which Mortgagor deems to be qualified in all respects. The initial manager is Bonnie Management Corporation who is satisfactory to Mortgagee. Should Mortgagor or Mortgagee determine that the existing manager is objectionable for any reason then the objecting party shall deliver written notice to the other party and, Mortgagor shall, within thirty (30) days thereafter recommend a new manager who is qualified in Mortgagor's opinion to manage the Property and who would be acceptable to Mortgagee. Mortgagor shall deliver to Mortgagee the name and address of the proposed new manager, plus reasonably detailed information on the experience and qualifications of the proposed manager. Mortgagee shall not unreasonably withhold its approval of the proposed new manager, providing said new manager is experienced in the management and leasing of property similar in location and tenancy to the Property and said proposed new manager is well regarded in the community. If the proposed manager is objectionable, then Mortgagee shall deliver written notice to Mortgagor and Mortgagor shall, within thirty (30) days thereafter, submit the name of another proposed manager together with all the same information regarding same as was submitted with the original proposal. No new manager will be employed for the Property until a manager reviewed and not objected to by Mortgagee has been employed.

5. **GENERAL PROVISIONS.**

- (a) This Modification Agreement shall be effective as of the Effective Date.
- (b) In addition to the Note and Mortgage modifications set forth above, the parties hereto do hereby modify the other Loan Documents so as to secure said Note and Mortgage as modified herein. Each reference in each of the Loan Documents to the Note, the Mortgage or any of the other Loan Documents is hereby conclusively deemed to refer to such documents as modified herein. Reference in any of the Loan Documents to any one or more of the Loan Documents shall be conclusively deemed to include this Modification Agreement and any other document executed in connection herewith.

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- (c) All of the Property shall remain in all respects subject to the lien, charge and encumbrance of the Mortgage and the other Loan Documents, as herein modified, and nothing herein contained and nothing done pursuant hereto, shall affect the lien, charge or encumbrance of the Mortgage and the other Loan Documents, as herein modified, or the priority thereof with respect to other liens, charges, encumbrances or conveyances, or releases or affect the liability of any party or parties who may now or hereafter be liable under or on account of the Loan Documents, or that certain Amended and Restated Indemnity Agreement of even date herewith from the Beneficiary in favor of Mortgagee.
- (d) Mortgagor and Beneficiary hereby ratify and reaffirm their respective liabilities with respect to the Loan Documents as modified herein and acknowledge that the Loan Documents as so modified are in full force and effect on the date hereof. As part of the consideration to Mortgagee herein, Mortgagor and Beneficiary hereby waive all set-offs, counterclaims, claims and all other defenses of every nature whatsoever which they have respectively with respect to the Loan Documents.
- (e) A default herein shall constitute a default in all Loan Documents.
- (f) Mortgagor and Beneficiary acknowledge that they have thoroughly read and reviewed the terms and provisions of this Modification Agreement and are familiar with same, that the terms and provisions contained herein are clearly understood by them and have been fully and unconditionally consented to by them, and that Mortgagor and Beneficiary have had full benefit and advice of counsel of their own selection, or the opportunity to obtain the benefit and advice of counsel of their own selection, in regard to understanding the terms, meaning and effect of this Modification Agreement, and that this Modification Agreement has been entered into by Mortgagor and the Joinder attached hereto by Beneficiary, freely, voluntarily, with full knowledge, and without duress, and that in executing this Modification Agreement or the Joinder, as the case may be, neither Mortgagor nor Beneficiary is relying on any other representations either written or oral, express or implied, made to Mortgagor or Beneficiary, by any other party hereto, and that the consideration received by Mortgagor and/or Beneficiary hereunder has been actual and adequate.
- (g) Time is of the essence hereof.
- (h) Except as expressly provided herein to the contrary, nothing herein contained shall be deemed to nullify, discharge or extinguish (i) the contractual relationship between the parties hereto as it existed until the

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date hereof under the Loan Documents or (ii) the indebtedness evidenced by the Note. This Modification Agreement, and the documents executed pursuant hereto, constitute an amendment only, and not a novation.

- (i) The persons signing this agreement on behalf of Mortgagor hereby represent and warrant that they are duly and unconditionally authorized and empowered to execute this agreement without any further act being required.
- (j) This Modification Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (k) This Modification Agreement is executed by Cole Taylor Bank successor trustee to Harris Trust and Savings Bank as Trustee as aforesaid, in the exercise of the power and authority conferred upon and fixed in it as such Trustee, and it is expressly understood and agreed that nothing herein contained shall be constituted as creating any liability on said Bank, as Trustee as aforesaid, or on said Bank personally, to pay said Note 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 the Mortgagee and by every person now or hereafter claiming any right to security hereunder, and that so far as Bank, as Trustee as aforesaid, and its successors, and Bank, personally, are concerned, the Mortgagee and the holder or holders of the Note and the owner or owners of the indebtedness accruing thereunder or under the Mortgage shall look solely to any one or more of (a) the Property conveyed pursuant to the Mortgage for the payment thereof, by the enforcement of the lien thereby created, in the manner therein and in the Note provided, or (b) action to enforce the personal liability of any obligor, guarantor or co-maker or (c) enforcement of any other security or collateral securing the obligations created by the Note, the Mortgage or the other Loan Documents.
- (l) Except as set forth in 1) the Restated Indemnity Agreement and 2) the Indemnity Agreement dated January 7, 1991 (the "Original Indemnity Agreement") with respect to any liability arising under the Original Indemnity Agreement as a result of acts occurring prior to the date hereof ("Prior Occurrences"), Beneficiary shall have no liability to Lender hereunder, under the Commitment, the Joinder or any other Loan Documents, all such liability being waived by Mortgagee. Except for Prior Occurrences, Mortgagee accepts the Restated Indemnity Agreement in place of the Original Indemnity Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Modification Agreement to be executed and delivered, all as of the day, month and year first above written.

Mortgagor:

COLE TAYLOR BANK successor Trustee to Harris Trust and Savings Bank, not personally but solely as Trustee as aforesaid

Attest:

Secretary

By: _____
Vice President

Mortgagee:

THE LIFE INSURANCE COMPANY OF VIRGINIA

By: _____
Asst. Vice President

By: _____
Assistant Secretary

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IN WITNESS WHEREOF, the parties hereto have caused this Modification Agreement to be executed and delivered, all as of the day, month and year first above written.

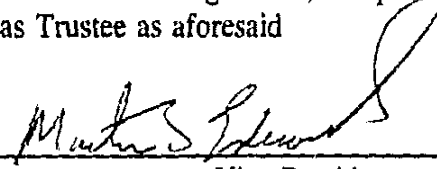
Mortgagor:

COLE TAYLOR BANK successor Trustee to Harris Trust and Savings Bank, not personally but solely as Trustee as aforesaid

Attest:



Trust Officer Secretary

By: 

Vice President

Mortgagee:

THE LIFE INSURANCE COMPANY OF VIRGINIA

By: _____
Vice President

By: _____
Assistant Secretary

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, MARITZA CASTILLO a Notary Public in and for said County in the State aforesaid, do hereby certify that MARTIN S. EDWARDS Vice President of Cole Taylor Bank successor trustee to Harris Trust and Savings Bank, an Illinois Corporation, and JACKLIN ISHA, ~~Assistant Secretary~~, of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and ~~Assistant Secretary~~, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said Bank, as Trustee, for the uses and purposes therein set forth; and the said ~~Assistant Secretary~~ did also then and there acknowledge that he, as custodian for the corporate seal of said COLE TAYLOR BANK did affix the said instrument as ~~his~~ own free and voluntary act, and as the free and voluntary act of said Bank, as Trustee, for the uses and purposes therein set forth.

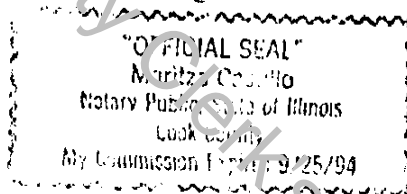
Given under my hand and notarial seal this 17th day of March, 1994.

*
TRUST OFFICER

Maritza Castillo
Notary Public

My Commission Expires:

9-25-94



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STATE OF Virginia)
COUNTY OF Henrico) SS.

I, Berkeley H. Polson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Kevin J. Chase, personally known to me to be the AV President of The Life Insurance Company of Virginia, a corporation of the State of Virginia, and John E. Capertm, personally known to me to be the Ast. Secretary of said Corporation, whose names are subscribed to the within Instrument, appeared before me this day in person and severally acknowledged that as such AV President and Ast. Secretary they signed and delivered the said Instrument as AV President and Ast. Secretary of said Corporation as their free and voluntary act and as the free and voluntary act and deed of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 17th day of ^{March}~~February~~, A.D. 1994.

Berkeley H. Polson
Notary Public

My Commission Expires:

September 30, 1997

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JOINDER

The undersigned, being the owner of one hundred percent (100%) of the beneficial interest in, and being the sole beneficiary of the Trust which is the Mortgagor under the foregoing Modification Agreement, hereby consents to and joins solely in the terms and provisions of Paragraphs 5(d) and 5(f) of the foregoing Modification Agreement. Except as may be provided for in 1) the Indemnity Agreement dated January 7, 1991 with respect to liability arising thereunder as a result of acts occurring prior to the date hereof and 2) that certain Amended and Restated Indemnity Agreement of even date herewith, nothing herein contained shall be deemed to render the undersigned liable upon any obligations for payments or performance provided in the Note, the Mortgage or any other Loan Document.

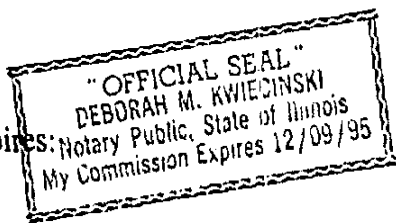
Dated: February 29, 1994

Joseph W. Bernstein
Joseph W. Bernstein

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this 29 day of February, 1994, before me appeared Joseph W. Bernstein to me personally known, who, being by me duly sworn, did say that he executed the foregoing instrument as his free and voluntary act and deed for the purposes therein contained.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



My Term Expires:

Deborah M. Kwiecinski
Notary Public - Signature

Deborah M. Kwiecinski
Notary Public - Printed Name

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EXHIBIT A

LOT 125 IN CENTEX INDUSTRIAL PARK UNIT 91, BEING A SUBDIVISION IN THE NORTH ½ OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

STREET ADDRESS: 1455-1645 GREENLEAF AVENUE
ELK GROVE VILLAGE, ILLINOIS

P.I.N.: 08-34-203-009-0000

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