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COOK COUNTY RECORDER \$55.00

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75-33-436

FORBEARANCE AND LOAN MODIFICATION AGREEMENT

553

This Forbearance and Loan Modification Agreement (the "Agreement") is made as of this 19th day of January, 1995 (the "Effective Date"), by and among AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not individually, but solely as Successor Trustee ("Borrower") to South Central Bank and Trust Company, as Trustee under that certain Trust Agreement dated August 22, 1989 and known as Trust No. L-365 (the "Trust"), LORAINE PON ("Guarantor"), KAM L. LIU ("Additional Guarantor") and SOUTH CENTRAL BANK AND TRUST COMPANY ("Lender").

WITNESSETH THAT:

WHEREAS, Borrower has executed and delivered to Lender that certain Installment Note dated August 23, 1989 in the original principal amount of One Hundred Fifty-Seven Thousand Five Hundred and No/100 (\$157,500.00) Dollars (the "Note"); and

WHEREAS, the Note is secured by that certain Trust Deed dated August 23, 1989 executed by Borrower on the property commonly known as 3115-3121 South Wallace Street, Illinois and legally described in Exhibit "A" attached hereto (the "Mortgaged Property"), which was recorded with the Recorder's Office on August 24, 1989 as Document No. 89-397088 (the "Trust Deed"); and

WHEREAS, the Note is further secured by that certain Assignment of Rents dated August 23, 1989 executed by Borrower in connection with the Mortgaged Property which was recorded with the

THIS DOCUMENT WAS PREPARED BY
AND UPON RECORDING SHOULD BE
RETURNED TO:

Donna M. Shaw, Esq.
Schwartz & Freeman
401 North Michigan Avenue
Suite 1900
Chicago, Illinois 60611

STREET ADDRESS:

3115-3121 South Wallace Street
Chicago, Illinois 60616

PERMANENT TAX IDENTIFICATION
NUMBER:

17-33-104-012

BOX 333-CTI

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Recorder's Office on August 24, 1989 as Document No. 89-397089 (the "Assignment of Rents"); and

WHEREAS, the Note is further secured by an assignment of one-hundred (100%) percent of the beneficial interest in the Trust executed by Guarantor as the sole beneficiary thereof pursuant to that certain Collateral Assignment of Beneficial Interest dated August 22, 1989 executed by Guarantor in favor of Lender (the "Collateral Assignment of Beneficial Interest"); and

WHEREAS, the Borrower's obligations under the Note, as well as all existing and after-incurred obligations owed by Borrower to Lender, were guaranteed by Guarantor pursuant to that certain Guaranty Agreement dated August 22, 1989 (the "Guaranty"); and

WHEREAS, the proceeds of the Note were procured and used by Borrower for business purposes and said indebtedness constitutes a business loan within the purview of the applicable Illinois Compiled Statutes and the federal Truth in Lending Act, as amended and Regulation Z promulgated thereunder; and

WHEREAS, a default has occurred under the terms of the Note in that monthly payments due thereunder have been delinquent since April 23, 1994; and

WHEREAS, a default has also occurred under the terms of the Note in that it matured by its own terms on September 23, 1994 and all sums due and owing under the Note remain unpaid to date; and

WHEREAS, as of January 5, 1995, the outstanding principal balance due under the Note equals One Hundred Fourteen Thousand Nine Hundred Fifty-Eight and 97/100 (\$114,958.97) Dollars and the accrued and unpaid interest due thereunder equals Nine Thousand Five Hundred Ninety-Nine and 81/100 (\$9,599.81) Dollars; and

WHEREAS, as of January 5, 1995, the outstanding balance contained in the real estate tax escrow account for the Mortgaged Property established with Lender (the "Tax Escrow Account") equals Seven Hundred Three and 07/100 (\$703.07) Dollars; and

WHEREAS, notwithstanding the aforesaid defaults under the Note (the "Existing Defaults") Borrower, Guarantor and the Additional Guarantor have requested Lender to:

- (i) forbear from exercising its rights under the Note, the Trust Deed, the Assignment of Rents, the Collateral Assignment of Beneficial Interest and the Guaranty as a result of the Existing Defaults; and
- (ii) to extend the maturity date of the Note upon the same monthly repayment terms and interest rate

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until the earlier of: (a) a sale of the Mortgaged Property or (b) July 31, 1995; and

WHEREAS, Guarantor acknowledges that she will be personally benefitted if Lender agrees to forbear from presently exercising its rights and remedies in connection with the Existing Defaults and extends the maturity date of the Note on terms agreeable to Lender in order to induce Lender to enter into this Agreement; and

WHEREAS, the Additional Guarantor, who is a licensed real estate broker engaged by Borrower and Guarantor to sell the Mortgaged Property, will be personally benefitted if Lender agrees to forbear from presently exercising its rights and remedies in connection with the Existing Defaults and extends the maturity date of the Note on terms agreeable to Lender in order to afford the Additional Guarantor time to sell the Mortgaged Property and to induce Lender to enter into this Agreement; and

WHEREAS, Lender is willing to forbear from exercising its rights and remedies in connection with the Existing Defaults and to extend the maturity date of the Note until the earlier of: (a) a sale of the Mortgaged Property or (b) July 31, 1995 (the "Extension Period") provided Borrower and Guarantor execute this Agreement in order to evidence the consent and acceptance by Borrower and Guarantor of all of Lender's following conditions (collectively, the "Lender's Conditions") for such forbearance and loan modification:

- (1) Borrower shall pay to Lender upon the execution of this Agreement the sum of \$4,958.97 to reduce the outstanding principal balance due under the Note to \$110,000.00;
- (2) Borrower shall pay to Lender upon the execution of this Agreement the sum of \$9,599.81 in payment of the delinquent accrued and unpaid interest due under the Note through and including January 5, 1995;
- (3) Borrower shall pay to Lender the sum of \$675.36 upon the execution of this Agreement which represents a payment of the interest due on the Note for the period beginning on January 6, 1995 through and including January 23, 1995;
- (4) Borrower shall pay any delinquent real estate taxes due on the Mortgaged Property;
- (5) In addition to the monthly payments due under the Note, Borrower shall remit to Lender the sum of Four Hundred Eighty-Eight and 16/100

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(\$488.16) Dollars beginning on February 23, 1995 and continuing on the twenty-third day of each calendar month thereafter during the term of the Note to fund the Tax Escrow Account with Lender to pay the future real estate taxes due on the Mortgaged Property. Upon the execution of this Agreement, Borrower shall also deposit the sum of \$3,658.10 with Lender to increase the balance of the Tax Escrow Account;

- (6) Borrower shall obtain a Release executed by International Bank of Chicago in recordable form releasing the lien of its Mortgage dated July 12, 1993 and recorded on July 21, 1993 with the Cook County, Illinois Recorder of Deeds Office as Document No. 93564198;
- (7) Additional Guarantor shall execute a Guaranty dated of even date herewith in favor of Lender in form and content acceptable to Lender (the "Additional Guaranty") in order to guaranty the repayment to Lender of all obligations due under the Note, as amended by this Agreement and under all of the "Loan Documents" (as hereinafter defined), as amended by this Agreement; and
- (8) Borrower provides Lender at its expense with an ALTA mortgage loan title insurance policy issued by Chicago Title Insurance Company covering the recording date of this Agreement which shall not contain any title exceptions that are not acceptable to Lender.

WHEREAS, Borrower, Guarantor and Additional Guarantor accept and consent to all of Lender's Conditions and hereby each affirm and covenant to Lender that Lender's agreement to forbear from presently exercising its rights and remedies in connection with the Existing Defaults and Lender's consummation of the loan modification transaction evidenced by this Agreement is expressly contingent upon satisfaction of all of Lender's Conditions by Borrower, Guarantor and Additional Guarantor; and

WHEREAS, the parties hereto are desirous of amending the terms of the Note, the Trust Deed, the Assignment of Rents, the Collateral Assignment of Beneficial Interest, the Guaranty and all other loan documents evidencing and/or securing the Note (hereinafter all of the foregoing documents are collectively referred to as the, "Loan Documents"); and

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WHEREAS, Borrower, Guarantor, Additional Guarantor and Lender have agreed to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IT IS AGREED:

1. INCORPORATION OF RECITALS. The parties hereby represent and warrant to each other that the recitals set forth above are true and correct and are a material inducement to each party's agreement to enter into this Agreement. The parties further agree that all of the recitals set forth above are hereby incorporated in the text of this Agreement by reference to the same extent as if fully set forth in this Agreement.
2. EXECUTION AND DELIVERY OF ADDITIONAL GUARANTY. Additional Guarantor shall execute the Additional Guaranty dated of even date herewith in order to guaranty all of the obligations of Borrower under the Note, as amended by this Agreement and all of the obligations of Borrower and Guarantor respectively under the Loan Documents, as amended by this Agreement.
3. MODIFICATION OF NOTE. As of the Effective Date, the Note is hereby modified as follows:
 - (a) The maturity date is hereby extended from September 23, 1994 to July 31, 1995.
 - (b) Borrower shall continue to remit monthly payments of principal and interest in the amount of \$1,706.84 under the Note beginning on February 23, 1995 and continuing on the 23rd day of each calendar month thereafter during the Extension Period, with a final payment of all outstanding principal and accrued and unpaid interest due on July 31, 1995.
4. MODIFICATION OF TRUST DEED. As of the Effective Date, the following shall be added as an additional clause (c) to enumerated paragraph 3 contained on the reverse side of the Trust Deed:

"or (c) if, without the prior written consent of the holders of the note, there shall occur or First Party shall make or permit or contract to make or permit, whether voluntary, involuntary, by operation of law or otherwise, any sale (including any sale or other transfer pursuant to installment contract for sale or sale under articles of

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agreement), assignment, conveyance, encumbrance, hypothecation or other transfer of the premises and/or any part of any interest in the premises and/or any assignment, transfer or encumbrance of the beneficial interest in any land trust which holds title to the premises."

5. FURTHER MODIFICATION OF TRUST DEED. The Trust Deed is hereby further amended to include the following new paragraph as Paragraph 11:

"11. (A) First Party shall deposit with Trustee monthly as and when payments are due under said Note, a sum equal to one-twelfth (1/12th) of Trustee's reasonable estimate of the total annual impositions, levies, taxes and assessments arising with respect to the Premises which will next become due and payable. Subject to the provisions of this Paragraph, Trustee shall pay, when and to whom due and payable under applicable contracts or law, to and including the maturity date, all of the aforesaid impositions, levies, taxes and assessments. Notwithstanding the foregoing, Trustee does not hereby assume any of the First Party's obligations under said laws to make such payments and nothing contained herein or in said Note shall require Trustee to perform any such obligations of the First Party except for the making of the aforesaid payments in accordance with and subject to the above specified terms. Trustee shall not be obligated to make such payments, except to the extent of deposits held in escrow hereunder. Any such payments made by Trustee in excess of the deposits held in escrow, together with interest thereon at the interest rate as set forth in the Note from the date of Trustee's payment(s) thereof until repaid by the First Party to Trustee, shall be due and payable by the First Party to Trustee upon demand, and, until paid, shall constitute part of the indebtedness secured by this Trust Deed. Trustee shall have no obligation to pay interest on any deposits held in escrow or to deposit such funds in interest-bearing accounts.

(B) If the deposits required by this Paragraph 11 are insufficient to pay the impositions, levies, taxes or assessments for which they are provided, Trustee shall give notice to the First Party and, on or before thirty (30) days before the same shall become due and payable, the First Party shall deposit with Trustee such additional monies as are necessary to pay, in full, such obligations.

(C) On the date hereof, the First Party shall deposit with Trustee an amount of money, which together with the

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aggregate of the monthly deposits to be made pursuant to Sub-Paragraph (A) above, if applicable, shall be sufficient to pay, in full, the total annual impositions, levies, taxes and assessments estimated by Trustee to become due and payable with respect to the Premises for the current tax year which are not yet due and payable.

(D) Trustee shall not be liable for failure to pay, when due, any such impositions, levies, taxes or assessments. Upon payment, in full of all indebtedness due under the Note and secured hereunder, Trustee shall deliver any remaining amount of the aforesaid deposits to or at direction of the First Party or the then owner of the Premises.

(F) All of the aforesaid deposits hereby are pledged, as additional security for the payment of all indebtedness due under the Note and secured hereunder (and for such purpose the First Party hereby grants to Trustee a security interest therein), to be applied by Trustee for the purposes hereinabove set forth and shall not be subject to the control of the First Party. Upon the occurrence of a default hereunder, Trustee, at its option and in its sole discretion, may apply any monies held pursuant to Sub-Paragraph (A) above on account of any of the First Party's indebtedness, in such order or priority as Trustee may elect."

6. OTHER LOAN DOCUMENTS MODIFICATION. As of the Effective Date, the Note, the Trust Deed, the Assignment of Rents, the Collateral Assignment of Beneficial Interest, the Guaranty, and all other Loan Documents are hereby deemed amended and modified to reflect the extension of the maturity date of the Note and the modification of the Trust Deed, as set forth herein and shall be read in accordance therewith. All references to the maturity date of the Note as being September 23, 1994 in the Note, the Trust Deed, the Assignment of Rents, the Collateral Assignment of Beneficial Interest, the Guaranty, and/or any other Loan Documents is hereby amended to July 31, 1995.
7. ACKNOWLEDGEMENT OF THE CONTINUED EFFECTIVENESS OF THE TRUST DEED AND THE ASSIGNMENT OF RENTS. Borrower hereby acknowledges that the Trust Deed and the Assignment of Rents continue to guarantee the obligations and liabilities of Borrower under the Note, as amended by this Agreement.
8. ACKNOWLEDGEMENT OF THE CONTINUED EFFECTIVENESS OF THE GUARANTY AND THE COLLATERAL ASSIGNMENT OF BENEFICIAL INTEREST. Guarantor hereby acknowledges that the

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Guaranty continues to guarantee the obligations and liabilities of Borrower under the Note, as amended by this Agreement and the Collateral Assignment of Beneficial Interest continues to secure the obligations and liabilities of Borrower under the Note, as amended by this Agreement.

9. REAFFIRMATION OF OBLIGATIONS, WARRANTIES AND REPRESENTATIONS. Borrower, Guarantor and Additional Guarantor hereby reaffirm each and every covenant, condition, obligation and provision set forth in the Loan Documents, as modified hereby. Borrower, Guarantor and Additional Guarantor hereby restate and reaffirm all of the warranties and representations contained in the Loan Documents, as modified hereby, as being true and correct as of the Effective Date.
10. ACKNOWLEDGEMENT OF NO CLAIMS, DEFENSES AND/OR OFFSETS. Borrower hereby acknowledges that as of the execution date of this Agreement, Borrower has no past or present claims, defenses, or set-offs against its obligations under the Note, the Trust Deed and the Assignment of Rents. Guarantor hereby acknowledges that as of the execution date of this Agreement, the Guarantor has no past or present claims, defenses or set-offs or obligations under the Guaranty, the Collateral Assignment of Beneficial Interest or any of the Loan Documents. Additional Guarantor hereby acknowledges that as of the execution date of this Agreement, the Additional Guarantor has no past or present claims, defenses or set-offs or obligations under the Additional Guaranty or any of the Loan Documents.
11. FUTURE DEFAULTS. Borrower, Guarantor and Additional Guarantor hereby agree that Lender's agreement to forbear from exercising all of its rights and remedies under the Note, the Trust Deed, the Assignment of Rents, the Collateral Assignment of Beneficial Interest and the Guaranty as a result of the Existing Defaults does not bar Lender from enforcing any and all rights and remedies given to Lender following a default under the Note, the Assignment of Rents, the Collateral Assignment of Beneficial Interest, the Guaranty and/or the Additional Guaranty which comes into existence after the execution date of this Agreement.
12. CONTINUED EFFECTIVENESS. Except for the modifications expressly stated above, the Note, the Trust Deed, the Assignment of Rents, the Collateral Assignment of Beneficial Interest, the Guaranty, the Additional Guaranty and any other documents evidencing and/or securing the Note, are not otherwise changed, modified or

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amended and all other terms and conditions thereof remain in full force and effect. Notwithstanding anything to the contrary contained herein, to the extent that any of the terms and conditions of the Loan Documents conflict with the terms of this Agreement, this Agreement shall control. The parties to this Agreement hereby acknowledge that this Agreement is intended only to modify the continuing obligations of Borrower, the Guarantor and the Additional Guarantor in the manner set forth herein, and is not intended as a novation.

13. REFERENCES. All references herein to any of the Loan Documents shall be understood to be to the Loan Documents as modified hereby. All references in any of the Loan Documents to any other one or more of the Loan Documents shall be hereafter deemed to be to such document(s) as modified hereby.
14. NO CUSTOM. The agreement to extend the maturity date of the Note as set forth in this Agreement shall not establish a custom or waive, limit or condition the rights and remedies of Lender under the Note, the other Loan Documents or the Additional Guaranty, all of which rights and remedies are expressly reserved, except as expressly provided in this Agreement.
15. LENDER'S COSTS. Concurrently with the execution of this Agreement, Borrower shall pay or cause to be paid to Lender all fees and expenses of Lender relating to this Agreement and the transactions contemplated herein, including, without limitation, fees and expenses of Lender's counsel and related expenses (the "Costs").
16. CONSTRUCTION. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois.
17. WAIVER. The failure of any party to enforce at any time any of the provisions of this Agreement, or to exercise any option which is herein provided, or to require at any time performance of any party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way effect the validity of this Agreement or any part thereof, or the right of any party to thereafter enforce each and every such provision.
18. SEVERABILITY. In the event any parts of this Agreement are found to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the invalid, illegal or unenforceable parts were deleted.

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19. SUCCESSORS. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors in interests and assigns.
20. ENTIRE AGREEMENT. This instrument contains the entire agreement of the parties and may not be changed orally but only by an agreement in writing signed by the party against whom enforcement any waiver, change, modification, extension or discharge is sought.
21. COUNTERPARTS. The parties agree that this Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

BORROWER:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee aforesaid

By: 

Its: _____

Attest: 

Its: _____

Address:

33 North LaSalle
Chicago, Illinois 60690

GUARANTOR:


LORAYNE PON

Residence Address:

270 West 25th Place
Chicago, Illinois 60616-2221

LENDER:

SOUTH CENTRAL BANK AND TRUST COMPANY

By: 


Name: ROBERT T. KRUPS

Its: Second Vice President

Address:

555 W. Roosevelt Road
Chicago, Illinois 60607

ADDITIONAL GUARANTOR:


KAM L. LIU

Residence Address:

3119 S HALSTED
CHICAGO ILLINOIS 60608

This document is a copy of the original instrument, but shall not be deemed to be a true and correct copy of the original instrument, and shall not be used as evidence in any court of law. The original instrument is the only one that shall be used as evidence in any court of law. This document is a copy of the original instrument, but shall not be deemed to be a true and correct copy of the original instrument, and shall not be used as evidence in any court of law. The original instrument is the only one that shall be used as evidence in any court of law.

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SUBORDINATION AGREEMENT

Kam L. Liu, a licensed real estate broker engaged by Borrower and Guarantor to sell the Mortgaged Property, for and in consideration of Lender's agreement to execute the attached foregoing Forbearance and Loan Modification Agreement extending the maturity date of the Note to enable the undersigned to sell the Mortgaged Property, hereby covenants, agrees and warrants to South Central Bank and Trust Company that the undersigned's claim of, or right to, lien under the statutes of the State of Illinois relating to Commercial Real Estate Broker's Liens with respect to and on the Mortgaged Property, the building or buildings thereon, and the tenant spaces therein, if any, whether now existing or hereafter arising, is, and shall at all times be subject, subordinate and inferior to the lien of South Central Bank and Trust Company's Trust Deed and Assignment of Rents on the Mortgaged Property. All of the capitalized terms used herein shall have the same meanings as contained in the attached foregoing Forbearance and Loan Modification Agreement.



Kam L. Liu

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EXHIBIT "A"

LEGAL DESCRIPTION OF THE MORTGAGED PROPERTY

LOTS 12, 13 AND 14 IN FISHER'S SUBDIVISION OF BLOCK 2 OF JUDD AND WILSON'S SUBDIVISION OF BLOCK 6 IN CANAL TRUSTEE'S SUBDIVISION OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT TAX INDEX NUMBER: 17-33-104-012

STREET ADDRESS: 3115-3121 Wallace Street
Chicago, Illinois 60616

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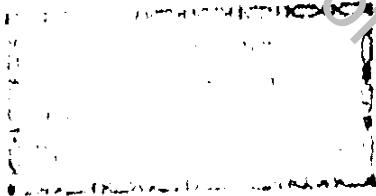
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that KAM L. LIU, is the same person whose name is subscribed to the attached Forbearance and Loan Modification Agreement and the attached Subordination Agreement, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Witness my hand and seal this 11th day of January, 1995.

(Signature)
Notary Public



My Commission Expires:

11-30-96

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that LORAINÉ PON, is the same person whose name is subscribed to the attached Forbearance and Loan Modification Agreement, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her free and voluntary act for the uses and purposes therein set forth.

Witness my hand and seal this 20th day of January, 1995.

Charles J. Egan
Notary Public

My Commission Expires:

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