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95327485

This Loan Modification was prepared by and after recording should be returned

David G. Spak
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Suite 2800
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312/606-3200

DEPT-01 RECORDING \$39.00
T#0012 TRAN 4209 05/18/95 15:00:00
#2664 JM *-95-327485
COOK COUNTY RECORDER

Property Address:

1800 Clybourn
Chicago, Illinois

14-32-418-002
14-32-418-004
14-32-420-001
14-32-420-003
14-32-420-004

**FIRST SUPPLEMENT TO AND
MODIFICATION OF MORTGAGE AND LOAN AGREEMENT**

This First Supplement to and Modification of Mortgage and Loan Agreement (this "Agreement") is entered into as of this 23rd day of March, 1995, by and among COLE TAYLOR BANK ("Trustee"), not personally but solely as Trustee under a Trust Agreement dated October 23, 1993, and known as Trust Number 934188, CMR LIMITED PARTNERSHIP, an Illinois limited partnership ("Beneficiary") (Trustee and Beneficiary are collectively referred to herein as "Borrower"), CHARLES R. MALK ("Guarantor") and LASALLE BANK LAKE VIEW, an Illinois banking association ("Lender").

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WITNESSETH:

WHEREAS, Borrower has heretofore executed that certain Non-Revolving Note dated March 23, 1994 (the "Original Note") in favor of Lender in the original principal amount of SIX MILLION EIGHT HUNDRED EIGHTY THOUSAND AND 00/100 DOLLARS (\$6,890,000.00);

WHEREAS, the Original Note is secured by, among other things, that certain Mortgage and Security Agreement dated as of March 23, 1994 and recorded March 25, 1994 in the Office of the Recorder of Deeds of Cook County, Illinois as Document Number 94273950 (the "Original Mortgage") from Trustee in favor of Lender, encumbering certain property (the "Property") legally described in Exhibit A, attached hereto and made a part hereof by this reference;

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BOX 333-CTI

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WHEREAS, the use of the proceeds of the Original Note is governed by that certain Construction Loan Agreement dated March 23, 1994 (the "Loan Agreement") by and among Borrower, Guarantor and Lender;

WHEREAS, contemporaneously with the execution and delivery of this Agreement, Borrower has executed and delivered to Lender that certain Non-Revolving Note Number 2 dated as of the date hereof (the "New Note") in favor of Lender in the original principal amount of ONE MILLION NINE HUNDRED EIGHTY THOUSAND AND 00/100 DOLLARS (\$1,980,000.00) (the Original Note and the New Note are collectively referred to herein as the "Notes"), which New Note evidences an increase in the maximum principal amount of the loan from Lender to Borrower secured in part by the Mortgage;

WHEREAS, the Notes, the Mortgage and all other documents and instruments securing or modifying the Notes or entered into in connection with the loan evidenced by the Notes (the "Loan") are hereinafter collectively referred to as the "Loan Documents"; and

WHEREAS, Lender and Borrower now desire to modify, supplement and amend the Mortgage and the Loan Agreement so that (a) the Mortgage shall constitute a first mortgage lien on the Property securing an indebtedness in the principal amount of EIGHT MILLION EIGHT HUNDRED SIXTY THOUSAND AND 00/100 DOLLARS (\$8,860,000.00), thereby consolidating the indebtedness under the Mortgage and this Agreement so that the same secures, equally and proportionately, the indebtedness evidenced by the Notes and (b) the Maturity Date (as defined in the Notes) of the Notes and the Loan is extended as provided herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby ratify and confirm the foregoing recitals and covenant and agree as follows:

1. Security for New Note; Parity of Security Interest.

The purposes and conditions upon which Borrower has heretofore granted, bargained, sold and conveyed the Mortgage are hereby amended to provide security equally and proportionately for the payment of each of the Notes pursuant to the terms of the Notes. This Agreement is expressly made supplemental to and part of the Mortgage so that the Mortgage, as supplemented, modified and amended hereby, shall now secure upon the same terms, covenants, conditions and warranties as contained in the Mortgage, equally and proportionately, the payment of each of the Notes in accordance with each of their terms and without preference, priority or distinction as to the lien or otherwise with respect to any of the Notes over the other by reason of the priority in the execution thereof. Wherever the term "Note" or "Loan"

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appears in the Mortgage, as supplemented, modified and amended hereby, it shall be understood to mean and include both of the Notes or the full amount of the Loan as evidenced by the Notes, as the case may be. Borrower hereby covenants and agrees to pay the consolidated principal amount of EIGHT MILLION EIGHT HUNDRED SIXTY THOUSAND AND 00/100 DOLLARS (\$8,860,000.00) with interest thereon as set forth in the Notes and secured by the Mortgage, as supplemented, modified and amended by this Agreement and by the other Loan Documents. Notwithstanding anything contained herein or in the Mortgage to the contrary, in no event shall the indebtedness secured by the Mortgage, as modified by this Agreement, exceed an amount equal to Twenty Million and 00/100 Dollars (\$20,000,000.00), as set forth in Paragraph 12 of the Mortgage.

2. Extension of Maturity Date. The Maturity Date as set forth in the Original Note, the New Note, the Loan Agreement and the other Loan Documents is hereby extended to July 30, 1995.

3. Modification of Loan Agreement; Incorporation of Documents. The proceeds of the New Note shall be used and disbursed in accordance with the terms and conditions of the Loan Agreement on a parity basis with the proceeds of the Original Note as if the New Note had been made at the same time as the Original Note. Wherever the term "Note" or "Loan" appears in the Loan Agreement, as supplemented, modified and amended hereby, it shall be understood to mean and include both of the Notes or the full amount of the Loan as evidenced by the Notes, as the case may be. Wherever the term "Loan Documents" appears in the Loan Agreement, as supplemented, modified and amended hereby, or in any other Loan Document, as defined in the Loan Agreement, it shall be understood to include this Agreement, the New Note, and any other documents entered into in connection with this Agreement.

4. Affirmation of Warranties and Representations. Borrower hereby affirms all of the warranties, covenants, undertakings, pledges, and representations it made in the Loan Agreement, the Mortgage and the other Loan Documents. Borrower hereby renews all of said warranties, covenants, undertakings, pledges, and representations in favor of Lender and makes the same as of the date hereof as fully and with the same force and effect as if repeated herein at length and dated the date hereof.

5. No Default. Borrower hereby acknowledges and agrees that, to the best of Borrower's knowledge, Lender is not in default of any of its obligations and no state of facts exist which, with the passage of time, the giving of notice, or both, would constitute a default under the Notes or any other Loan Document and Lender has the right to collect all indebtedness

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evidenced by the Notes, as modified herein, and to enforce any and all of its rights and remedies under the Loan Documents.

6. **Further Modifications.** Borrower acknowledges and agrees that by Lender's agreeing to the modifications of the terms and conditions of the Loan and the Loan Documents, as set forth in Paragraph 1 of this Agreement, Lender shall not be in any way obligated to further modify, extend, or amend the Loan or the Loan Documents or to forebear or forestall any collection efforts or other remedies it may have under the Loan Documents or at law or otherwise.

7. **Security.** The parties hereby agree that the Mortgage as modified herein and the other Loan Documents shall secure prompt and full payment of the indebtedness evidenced by the Notes, as modified herein (the "Indebtedness"), and do hereby extend the liens of any and all security for the Notes, including without limitation, the Mortgage and the other Loan Documents, until all of the Indebtedness evidenced and/or secured by the Notes, this Agreement, and the other Loan Documents, has been paid in full; provided, however, that this provision shall in no way affect or impair Lender's right to reinstate said liens if, after the Indebtedness has been repaid in full Lender is required to disgorge, return, or otherwise refund any portion of the Indebtedness.

8. **No Impairment.** Borrower and Lender intend that this Agreement shall not in any manner constitute a novation and shall in no way adversely affect, diminish or impair the Mortgage, the other Loan Documents, or the liens created thereby securing the payment of the Indebtedness and that such liens are and shall be and remain prior liens and shall not in any manner be waived or subordinated, the purpose of this Agreement being to carry forward all liens securing the Indebtedness, which are acknowledged by the parties hereto to be valid and subsisting. If this Agreement or any part hereof shall be construed or shall operate to affect the priority of the Mortgage, as modified, then to the extent this Agreement creates a charge on the Property encumbered by the Mortgage, as modified, in excess of that contemplated and permitted thereby, and to the extent third parties acquiring an interest in the Property between the time the Mortgage was recorded and the time this Agreement is recorded are prejudiced hereby, if any, this Agreement shall, at Lender's option, be void and of no force and effect.

9. **Miscellaneous.**

a. **No Other Effect.** The parties hereby agree that, as of the date hereof, any and all of the terms and provisions of the Notes, the other Loan Documents and any and all other documents, instruments or agreements

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evidencing, regulating, securing, amending, modifying or pertaining to the indebtedness evidenced by the Notes shall, except as modified herein, remain unchanged and the Loan Documents, and such other documents, instruments and agreements as modified hereby, are in full force and effect.

b. Applicable Law. This Agreement shall be governed and construed under the laws of the State of Illinois, without reference to the conflict of laws provisions of the laws of that State or any other state.

c. Validity and Interpretation. If this Agreement, or any part thereof, is hereafter determined by any court of competent jurisdiction to violate the requirements of any law, regulation, or ordinance (a "Determination"), the Notes, the Mortgage, or the other Loan Documents so affected shall be deemed to be amended nunc pro tunc to the extent required to avoid such a Determination impinging upon or in any way restricting the validity, enforceability or effect of the Notes, the Mortgage, and the other Loan Documents. The Notes, this Agreement, the Mortgage, and the other Loan Documents shall be read with the violative provisions stricken and shall be effective and enforceable at least to the extent as written prior to the particular modification thereof giving rise to a Determination. To the extent this Agreement is not invalid or in violation of any law, the Notes, the Mortgage and the other Loan Documents shall be given full force and effect.

d. Definitions. Terms which are not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement, the Notes and the Mortgage, provided, however, that the term "Loan Documents" also shall include and refer to this Agreement, the New Note and all other documents entered into in connection with this Agreement.

e. Incorporation of Recitals. The recitals set forth at the outset of this Agreement are incorporated herein by this reference as fully and with the same force and effect as if repeated herein at length.

f. Notices. Any notice, demand, request or other communication which any party may desire or may be required to give to any other party shall be given according to the provisions of the Mortgage.

g. Headings. The use of paragraph headings and of singular or plural, masculine, feminine or neuter nouns and pronouns is for convenience only and shall not affect the construction to be given to any of the provisions hereof.

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b. **Amendments.** No provision of this Agreement may be changed, altered or modified except by a writing signed by Lender and Borrower, nor may compliance with any provision be waived, by course of dealing or otherwise, except by a writing signed by the party or parties sought to be charged with such waiver.

i. **Counterparts.** This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must be produced or exhibited, be the Agreement, but all such counterparts shall constitute one and the same agreement.

10. **Exculpation.** This Agreement is executed by Cole Taylor Bank, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that no personal liability shall be asserted or be enforceable against said Trustee, because or in respect of the making, issue or transfer of this Agreement, all such liability, if any, being expressly waived by each original and successive holder hereof, but nothing herein contained shall modify or discharge the personal liability expressly assumed by any other party, and Lender accepts the same upon the express condition that no duty shall rest upon said Trustee, either personally or as said Trustee, to sequester the rents, issues and profits arising from the Property, or the proceeds arising from the sale or other disposition thereof.

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IN WITNESS WHEREOF, the undersigned caused this Agreement to be executed as of the day and year first above written.

BORROWER:

COLE TAYLOR BANK, NOT PERSONALLY BUT SOLELY AS TRUSTEE UNDER A TRUST AGREEMENT DATED OCTOBER 23, 1993, AND KNOWN AS TRUST NUMBER 934188

Attest:

By: [Signature]
Printed Name: DAVID LAYSON
Title: TRUST OFFICER

By: [Signature]
Printed Name: KENNETH E. PICKETT
Title: ASSISTANT VICE PRESIDENT

CMR LIMITED PARTNERSHIP, an Illinois limited partnership

By: CMR Development Corporation, an Illinois corporation, its general partner

By: [Signature]
Charles R. Malk,
President

GUARANTOR:

[Signature]
Charles R. Malk

LENDER:

LABALLE BANK LAKE VIEW

Attest:

By: [Signature]
Printed Name: TONI STANEK
Title: V.P.

By: [Signature]
Printed Name: JANE L. HOOVER
Title: V.P.

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Acknowledgment

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that KENNETH E. BIRNBAUM and DANIEL CRON, the President and Secretary, respectively, of Cole Taylor Bank, as Trustee aforesaid, a ILLINOIS CORP., 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 acknowledged that, as such President and Secretary, they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said Trustee for the uses and purposes therein set forth.

Given under my hand and official seal this 25th day of April, 1995.

Maritza Castillo
Notary Public
My commission expires: 10-2-95



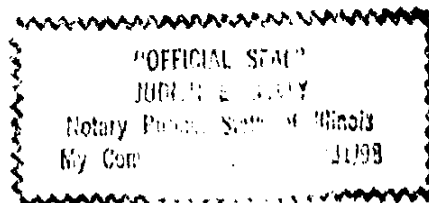
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Acknowledgment

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Steve L. Havel and Toni Stank, the V.P. and V.P., respectively, of LaSalle Bank Lake View, 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 acknowledged that, as such V.P. and V.P., they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of LaSalle Bank Lake View for the uses and purposes therein set forth.

Given under my hand and official seal this 25 day of April, 1995.

Judith E. Kelly
Notary Public
My commission expires:



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2025-01-15 10:00:00

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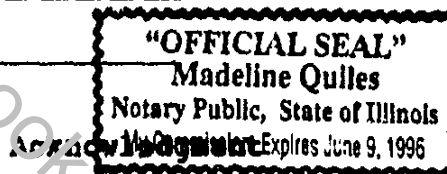
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Acknowledgment

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that Charles R. Malk, the President of CMR Development Corporation, an Illinois corporation, 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, as such President, he signed and delivered the said instrument as his free and voluntary act, as the free and voluntary act of said corporation and as the free and voluntary act of CMR Limited Partnership (of which said corporation is the sole general partner) for the uses and purposes therein set forth.

Given under my hand and official seal this 24th day of April, 1995.

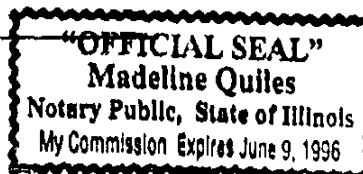
Madeline Quiles
Notary Public
My commission expires: _____



I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that Charles R. Malk, 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 he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this 24th day of April, 1995.

Madeline Quiles
Notary Public
My commission expires: _____



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EXHIBIT A

PARCEL 1:

LOTS 1 TO 6 AND 21 TO 26, ALL INCLUSIVE, IN BLOCK 6 IN THE SUBDIVISION OF LOTS 1 AND 2 OF BLOCK 8 IN SHEFFIELD'S ADDITION TO CHICAGO, SITUATED IN THE WEST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 4, 5, 6, 7, 8, 9 AND THAT PART OF LOT 3 LYING NORTH AND NORTHWESTERLY OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF SHEFFIELD AVENUE, 244.47 FEET SOUTH OF THE INTERSECTION OF SAID WEST LINE OF SHEFFIELD AVENUE WITH THE SOUTHWESTERLY LINE OF CLYBOURN AVENUE THENCE WEST AT RIGHT ANGLES TO SAID WEST LINE OF SHEFFIELD AVENUE 81.58 FEET MORE OR LESS TO ITS INTERSECTION WITH A LINE DRAWN PARALLEL TO AND 164.47 FEET SOUTHEASTERLY OF THE SOUTHEASTERLY LINE OF WILLOW STREET AS NOW OCCUPIED; THENCE SOUTHWESTERLY ALONG SAID PARALLEL LINE 91.71 FEET MORE OR LESS TO ITS INTERSECTION WITH THE NORTHEASTERLY LINE OF MARCEY STREET; ALL IN BLOCK 9 IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 8 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE SOUTH 1/2 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY IDENTIFICATION NUMBERS:

14-32-418-002
14-32-418-004
14-32-420-001
14-32-420-003
14-32-420-004

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