

F National Code Corporation NY  
225 W. 34th St., Suite 2110  
New York, N.Y. 10122  
(800) 221-0102 (212) 947-7200

RECORDING REQUESTED BY,  
THIS INSTRUMENT PREPARED BY,  
AND WHEN RECORDED MAIL TO:

DEPT-01 RECORDING \$37.50  
T#2222 TRAN 0253 06/06/95 11:30:00  
#1639 + VF \*-95-365221  
COOK COUNTY RECORDER

95365221

Gerard A. Hefner, Esq.  
Cadwalader, Wickersham & Taft  
100 Maiden Lane  
New York, New York 10038

AMENDMENT TO SECOND OPEN-END MORTGAGE, DEED OF TRUST,  
LEASEHOLD MORTGAGE, LEASEHOLD DEED OF TRUST, ASSIGNMENT OF  
RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING

(The maximum amount of principal indebtedness exclusive of interest which may be  
outstanding at any one time is \$60,000,000)

THIS AMENDMENT TO SECOND OPEN-END MORTGAGE, DEED OF  
TRUST, LEASEHOLD MORTGAGE, LEASEHOLD DEED OF TRUST, ASSIGNMENT  
OF RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE  
FILING (this "Instrument") dated as of May 25, 1995, by and from The Selmer Company,  
Inc., a Delaware corporation formerly known as Symphony Industries, Inc. ("Debtor"), whose  
address is c/o Kirkland Messina, Inc., 11100 Santa Monica Blvd., Suite 825, Los Angeles,  
California 90212, to:

1. BNY FINANCIAL CORPORATION, a New York corporation  
("BNY"), having its principal office at 1290 Avenue of the Americas, New York, New  
York 10104 (the "Secured Party"), as to any and all portions of the Collateral (as  
defined in the Second Open-End Mortgage, Deed of Trust, Leasehold Mortgage,  
Leasehold Deed of Trust, Assignment of Rents, Security Agreement Financing  
Statement and Fixture Filing) EXCEPT those portions of the Collateral which  
constitute interests in or to real property under the law of the State of North Carolina  
(which excepted Collateral is referred to herein as the "TD Collateral");

2. Chicago Title Insurance Company, a California corporation, as trustee  
("Trustee") whose address is 700 South Flower Street, Suite 900, Los Angeles,  
California 90017 for the benefit of Secured Party, but only as to the TD Collateral.

THIS FINANCING STATEMENT IS TO BE FILED FOR RECORD OR RECORDED,  
AMONG OTHER PLACES, IN THE REAL ESTATE RECORDS OF EACH COUNTY  
(OR, TO THE EXTENT SIMILAR RECORDS ARE MAINTAINED AT THE CITY OR  
TOWN LEVEL INSTEAD OF THE COUNTY LEVEL, EACH SUCH CITY OR TOWN) IN  
WHICH SAID LAND OR ANY PORTION THEREOF IS LOCATED. DEBTOR IS THE  
OWNER OF A RECORD INTEREST IN THE REAL ESTATE CONCERNED. THIS

3750  
BANK

95365221

UNOFFICIAL COPY

Property of Cook County Clerk's Office

15-11-11

# UNOFFICIAL COPY

INSTRUMENT IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS.

THE MATURITY DATE OF THE OBLIGATIONS SECURED HEREBY IS FEBRUARY 28, 2000.

ALL CAPITALIZED TERMS USED HEREIN WITHOUT DEFINITION SHALL HAVE THE MEANING ASCRIBED THERETO IN THE CREDIT AGREEMENT (DEFINED BELOW).

## WITNESSETH:

WHEREAS the Symphony Industries, Inc. ("Symphony") and Secured Party entered into that certain Revolving Credit, Receivables Purchase and Security Agreement, dated August 9, 1993, evidencing a principal indebtedness of up to \$45,000,000, exclusive of interest, which agreement was amended by the Amendment to Revolving Credit, Receivables Purchase and Security Agreement between Debtor and Secured Party declared effective as of December 21, 1994 (the Revolving Credit, Receivables Purchase and Security Agreement, as so amended, the "Existing Agreement"); and

WHEREAS, Symphony's obligations under the Existing Agreement were secured by, among other things, that certain Second Open-End Mortgage, Deed of Trust, Leasehold Mortgage, Leasehold Deed of Trust, Assignment of Rents, Security Agreement, Financing Statement and Fixture Filing, dated as of August 9, 1993 (the "Existing Mortgage"), between Symphony and Secured Party, which Existing Mortgage was recorded as set forth on Exhibit A attached hereto and, by reference, incorporated herein; and

WHEREAS, the Existing Mortgage encumbers, among other things, all of Debtor's right, title and interest in and to certain real property located in the cities, counties, parishes and/or states as set forth and more particularly described in Exhibit B attached hereto and, by this reference, incorporated herein; and

WHEREAS, Debtor and Steinway Musical Properties, Inc., a Massachusetts corporation, have entered into an Agreement and Plan of Merger, dated as of April 11, 1995 providing for the acquisition of Steinway Musical Properties, Inc. by Debtor; and

WHEREAS, Debtor, Steinway Inc., Selmer Industries, Inc., Steinway Musical Properties, Inc., Boston Piano Company, Inc. and Secured Party have entered into that certain Amended and Restated Revolving Credit, Term Loan and Security Agreement, of even date herewith, which Amendment amends and restates the terms and provisions of the Existing Agreement (the "Credit Agreement"); and

WHEREAS, Debtor and Secured Party wish to amend the Existing Mortgage to reflect the terms and provisions set forth in the Credit Agreement;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

NOW, THEREFORE, in consideration of the sum of ten dollars (\$10.00) in hand paid by Secured Party to Debtor, and for other good and valuable consideration, including, without limitation, the indebtedness herein recited, the receipt and sufficiency of which are hereby acknowledged, Debtor and Secured Party hereby amend and modify the Mortgage as follows:

1. All references in the Existing Mortgage to "Symphony Industries, Inc." as the Debtor are hereby deleted and "The Selmer Company, Inc." is hereby inserted in its place and stead.

2. All references in the Existing Mortgage to "August 9, 1996" as the maturity date is hereby deleted and "February 28, 2000" is hereby inserted in its place and stead.

3. Section 1.01(a) of the Existing Mortgage is hereby deleted in its entirety and the following inserted in its place and stead:

(a) Payment and performance of all Obligations of Debtor (as defined therein) under the Amended and Restated Revolving Credit and Security Agreement dated as of May 25, 1995 (together with all modifications, extensions, renewals and replacements thereof, the "Agreement") by and among Debtor, Steinway, Inc., Selmer Industries, Inc., Steinway Musical Properties, Inc., Boston Piano Company, Inc., and the Secured Party and all Obligations of the Debtor under the Operative Documents (defined below);

4. The reference in Section 1.02 of the Existing Mortgage to "Forty-Five Million Dollars (\$45,000,000)" as the maximum principal amount which may be secured by the Deed of Trust at any one time is hereby deleted and "Sixty Million (\$60,000,000)" is hereby inserted in its place and stead.

5. Section 7.11 of the Existing Mortgage is hereby deleted in its entirety and the following inserted in its place and stead:

**Section 7.11 Notices.** All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when sent, receipt electronically confirmed, addressed as follows, or to such other address as may be hereafter notified by the respective parties hereto:

To Secured Party: BNY Financial Corporation  
4201 Wilshire Boulevard  
Room 450  
Los Angeles, California 90010  
Attention: David Trinkle  
Telephone: (213) 930-3665  
FAX: (213) 933-4200

95365221

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

With a copy to:

BNY Financial Corporation  
1290 Avenue of the Americas  
New York, New York 10104  
Attention: Loan Administration Dept./  
Frank Imperato, V.P.  
Telephone: (212) 408-7068  
FAX: (212) 408-7030

To Debtor:

Selmer Industries, Inc.  
c/o Kirkland Messina, Inc.  
11100 Santa Monica Blvd.  
Suite 825  
Los Angeles, California 90025  
Attention: Dana Messina  
Telephone: (310) 445-6505  
FAX: (310) 445-6522

With a copy to:

Millbank, Tweed, Hadley & McCloy  
601 South Figueroa Street  
30th Floor  
Los Angeles, California 90017  
Attention: Eric H. Schunk, Esq.  
Telephone: (213) 892-4429  
FAX: (213) 629-5063

And a copy to:

The Selmer Company, Inc.  
600 Industrial Parkway  
Elkhart, Indiana 46514  
Attention: Michael R. Vickery  
Telephone: (219) 522-1675 (x312)  
FAX: (219) 295-5402

And a copy to:

Steinway Musical Properties, Inc.  
800 South Street  
Suite 515  
Waltham, Massachusetts 02154  
Attention:  
Telephone:  
FAX:

To Trustee:

Chicago Title Insurance Company  
700 South Flower Street  
Suite 900  
Los Angeles, California 90017  
FAX: (213) 891-0834

95365221

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

Except as expressly modified and amended herein, all the terms, conditions and covenants contained in the Existing Mortgage are hereby ratified and confirmed and continue in full force and effect.

This Instrument may be executed in several original counterparts. To facilitate filing and recording, there may be omitted from certain counterparts the parts of Exhibit B hereto containing specific descriptions of certain Collateral which relate to land under the jurisdiction of offices or located in cities, towns or counties other than the office or city, town or county in which the particular counterpart is to be filed or recorded. A complete copy of this Instrument is being filed for record in the Office of the County Recorder of Cook County, Illinois. The counterpart of this Instrument filed in Cook County, Illinois, contains all of Exhibit B relating to the Collateral. As to the counterparts to be filed in certain states, the signatures and acknowledgments by Secured Party may be omitted if not required by applicable law. Each counterpart shall be deemed to be an original for all purposes, and all counterparts shall together constitute but one and the same instrument; provided, however, Secured Party (and Trustee, as to the TD Collateral) hereunder and under applicable law as though each counterpart hereof were a separate amendment to mortgage, deed of trust, deed to secure debt, chattel mortgage or other security instrument covering only the portions of the Collateral located in the city, town, county or parish wherein such counterpart is recorded.

95365221

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have, as of the date set forth in the acknowledgments hereto, effective as of the date first above written, caused this Instrument to be duly executed in the presence of the undersigned Notary Public in and for the City of New York, State of New York, and in the presence of the undersigned competent witnesses, after due reading of the whole.

SIGNED IN THE  
PRESENCE OF :

DEBTOR:

THE SELMER COMPANY, INC.  
a Delaware corporation

By: [Signature]  
Dana Messina  
Executive Vice President

[Signature]  
Name: EV Connolly  
(Witness to both)

[Signature]  
Name: Prudil Alexander  
(Witness to both)

ATTEST:

[Signature]  
(Corporate Seal)  
Name: Rick Smith  
Title: Asst. Secretary

SIGNED IN THE  
PRESENCE OF :

SECURED PARTY:

BNY FINANCIAL CORPORATION  
a New York corporation

By: [Signature]  
David Trinkle  
Senior Vice President

[Signature]  
Name: EV Connolly  
(Witness to both)

[Signature]  
Name: Prudil Alexander  
(Witness to both)

ATTEST:

[Signature]  
(Corporate Seal)  
Name: Jacqueline R. McSwiggan  
Title: Secretary

95365221

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

On the 25 day of May 1995, before me personally came DANA MESSINA to me known, who, being by me duly sworn, did depose and say that he resides at 1348 Goucher Street, Pacific Palisades, California 90272; that he is the Executive Vice President of THE SELMER COMPANY, INC., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was also so affixed by authority of the board of directors of said corporation and that he signed his name thereto by like authority.

*Raffaella De Stefano*  
Notary Public

RAFFAELA DOSTEFANO  
Notary Public, State of New York  
No. 43-4701802  
Qualified in Richmond County  
Certificate filed in New York County  
Commission Expires July 31, 1995

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

On the 25 day of May 1995, before me personally came DAVID TRINKLE to me known, who, being by me duly sworn, did depose and say that he resides at 344 Plumosa Drive, Pasadena, California 91107; that he is the Senior Vice President of BNY FINANCIAL CORPORATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was also so affixed by authority of the board of directors of said corporation and that he signed his name thereto by like authority.

*Raffaella De Stefano*  
Notary Public

RAFFAELA DOSTEFANO  
Notary Public, State of New York  
No. 43-4701802  
Qualified in Richmond County  
Certificate filed in New York County  
Commission Expires July 31, 1995

95365221

CLERK'S OFFICE

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A

Recorded on February 15, 1995, in  
the Office of the Recorder of Cook  
County, Illinois, as Document No.  
95-109064.

Property of Cook County Clerk's Office

95365221

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT B

The leasehold estate of Debtor created pursuant to that certain Lease Agreement dated as of November 1, 1991 between American Office Equipment Company, an Illinois corporation, as Lessor, and The Selmer Company, L.P., a Delaware limited partnership (as predecessor in interest to Debtor), as Lessee, covering 48,556 square feet in the building of Lessor, described as follows:

LOT 1 IN CONSOLIDATION OF THE EAST 2 FEET OF LOT 38 AND ALL OF LOTS 39 AND 40 IN BLOCK 2 IN SHAWMUT AVENUE ADDITION TO LAGRANGE, A SUBDIVISION OF THE NORTH ½ OF SECTION 4, TOWNSHIP 38 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Street Address: 415 E. Shawmut Avenue,  
LaGrange, Illinois

Real Estate Tax Permanent Identification Number: 18-04-200-033-0000 (3)

Federal Tax ID# 95-4432228

95365221

UNOFFICIAL COPY

Property of Cook County Clerk's Office