

THIS DOCUMENT WAS PREPARED BY,  
AND AFTER RECORDING, RETURN TO:

Gary K. Fordyce, Esq.  
ABN AMRO North America, Inc.  
135 South La Salle Street, Suite 925  
Chicago, Illinois 60603

PERMANENT TAX INDEX NUMBERS:

13-25-107-001  
13-25-107-022

PROPERTY ADDRESS:

3033 West Fletcher  
Chicago, Illinois 60618

SECOND MODIFICATION AGREEMENT

This SECOND MODIFICATION AGREEMENT dated as of August 1, 1997 (the "Second Modification"), is made by and among COLE TAYLOR BANK, an Illinois banking association, whose address is 350 East Dundee Road, Wheeling, Illinois 60090-3192, not personally but solely as Trustee (the "Mortgagor") under a Trust Agreement dated March 1, 1988 and known as Trust No. 88-120 (the "Borrower"), 3033 WEST FLETCHER PARTNERSHIP, an Illinois general partnership (the "Beneficiary"), RICHARD N. ASCHER ("Richard Ascher"), DAVID R. ASCHER ("David Ascher"; Richard Ascher and David Ascher being collectively referred to herein as the "Guarantors"), whose addresses are c/o Ascher Brothers Co., Inc., 3033 West Fletcher, Chicago, Illinois 60618, and LASALLE NATIONAL BANK, a national banking association, its successors and assigns (the "Lender"), whose address is 135 South La Salle Street, Chicago, Illinois 60603.

WITNESSETH:

A. The Lender has made a mortgage loan (the "Mortgagor Loan") to the Mortgagor in the original principal amount of Four Hundred Thousand and 00/100 Dollars (\$400,000.00), evidenced by that certain Note dated July 1, 1991 (the "Mortgagor Note"), executed by the Mortgagor and payable to the order of the Lender.

B. The Mortgagor Note is secured by, among other things, the following documents (the Mortgagor Note, together with the following documents and any and all other documents evidencing or securing the Mortgagor Loan being collectively referred to herein as the "Mortgagor Loan Documents"):

BOX 333-CTI

APR 15 86 1 05

10

(i) Mortgage, Security Agreement and Financing Statement dated as of July 1, 1991, executed by the Mortgagor to and for the benefit of the Lender, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on July 17, 1991 as Document No. 91356596 (the "Mortgage"), which Mortgage encumbers the real property and improvement thereon legally described on Exhibit "A" attached hereto and made a part hereof (the "Premises");

(ii) Assignment of Rents and Leases dated as of July 1, 1991, jointly and severally executed by the Mortgagor and the Beneficiary to and for the benefit of the Lender, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on July 17, 1991 as Document No. 91356597 and relating to the Premises (the "Assignment of Rents and Leases");

(iii) Collateral Assignment of Beneficial Interest and Security Agreement dated July 1, 1991, executed by the Beneficiary to and for the benefit of the Lender and collaterally assigning to the Lender the beneficial interest and power of direction of the Beneficiary in and to the Mortgagor (the "Collateral Assignment");

(iv) Continuing Unconditional Guaranty dated July 1, 1991, executed by the Beneficiary to and for the benefit of the Lender (the "Beneficiary Guaranty");

(v) Continuing Unconditional Guaranty dated July 1, 1991, executed by Richard Ascher to and for the benefit of the Lender (the "Richard Ascher Guaranty"); and

(vi) Continuing Unconditional Guaranty dated July 1, 1991, executed by David Ascher to and for the benefit of the Lender (the "David Ascher Guaranty"; the Beneficiary Guaranty, the Richard Ascher Guaranty and the David Ascher Guaranty being collectively referred to herein as the "Guaranties").

C. The Lender has also made a loan to the Beneficiary (the "Beneficiary Loan"), evidenced by that certain Installment Note dated June 26, 1992 in the original principal amount of Two Hundred Thousand and 00/100 Dollars (\$200,000.00), as extended from time to time (the "Beneficiary Note"; the Beneficiary Note, together with any and all other documents evidencing or securing the Beneficiary Loan being collectively referred to herein as the "Beneficiary Loan Documents").

D. Under and pursuant to that certain First Modification Agreement dated as of May 1, 1994, by and between the Mortgagor and the Lender, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on July 26, 1994 as Document No. 94657530 (the "First Modification; the Mortgagor Loan Documents and the Beneficiary Loan Documents, as modified by the First Modification being collectively referred to herein as the "Loan Documents"), the Mortgagor Loan and the Beneficiary Loan (collectively, the "Loan") were consolidated into a single loan and increased to the principal amount of Four Hundred Twenty Thousand Nine Hundred Thirty Six Dollars and 94/100 (\$420,936.49), and the term of which was extended to August 1, 1999.

# UNOFFICIAL COPY

97776098 Page 3 of 10

E. Ascher Brothers Co., Inc., an Illinois corporation (the "Company") and the Lender have entered into that certain Revolving Loan and Security Agreement dated as of July 1, 1994, as modified and amended from time to time (collectively, the "Loan Agreement"), pursuant to which Loan Agreement the Lender has made certain revolving loans to the Company, as evidenced by that certain Revolving Note dated as of August 1, 1997 in the maximum principal amount of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00), executed by the Company and payable to the order of the Lender (the "Company Revolving Note").

F. The Mortgagor, the Beneficiary, the Guarantors and the Lender have now agreed to modify and amend the Loan Documents to also secure the obligations and liabilities of the Company to the Lender under and pursuant to the Loan Agreement and as evidenced by the Company Revolving Note.

G. The Beneficiary, subject to the collateral interest of the Lender, owns all of the beneficial interest and power of direction in the Mortgagor, and the Guarantors are the sole general partners of the Beneficiary.

H. The Beneficiary leases the Premises to the Company under and pursuant to that certain Industrial Building Lease dated April 4, 1988, as amended and/or restated from time to time, the Guarantors are officers and the sole shareholders of the Company, and the extension and continued extension of credit by the Lender to the Company is necessary and desirable to the conduct and operation of the business of the Company and will inure to the direct financial benefit of the Mortgagor, the Beneficiary and the Guarantors.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## AGREEMENTS:

1. Recitals. The recitals set forth above shall be incorporated herein as if set forth in their entirety.

2. Definitions. Capitalized words and phrases not otherwise defined in this Second Modification shall have the meanings assigned thereto in the Loan Documents.

3. Obligations Secured. The Loan Documents are hereby amended to secure:

(a) the obligations and liabilities of the Mortgagor to the Lender under and pursuant to the Mortgagor Note, as modified and increased to the principal amount of Four Hundred Twenty Thousand Nine Hundred Thirty Six Dollars and 94/100 (\$420,936.49) under and pursuant to the First Modification, together with any and all notes issued in renewal thereof or in substitution or replacement therefor (the Mortgagor Note, as modified and increased by the First Modification being collectively

referred to herein as the "Mortgage Note"), in and by which Mortgage Note the Mortgagor promises to pay to the Lender the principal sum thereof, together with interest thereon prior to maturity or the occurrence of a Default (as defined in the Mortgage) at the floating per annum rate of interest announced from time to time by the Lender as its Prime Rate plus one percent (1.00%), and following maturity or the occurrence of a Default at the floating per annum rate of interest announced from time to time by the Lender as its Prime Rate plus three percent (3.00%);

(b) the obligations and liabilities of the Company to the Lender under and pursuant to the Loan Agreement, as amended from time to time, and as evidenced by the Company Revolving Note, together with any and all notes issued in renewal thereof or in substitution or replacement therefor, in and by which Loan Agreement and Company Revolving Note the Company promises to pay to the Lender the principal sum thereof, together with interest thereon prior to maturity or the occurrence of an Event of Default (as defined in the Loan Agreement) at the floating per annum rate of interest announced from time to time by the Lender as its Prime Rate plus one-half of one percent (0.50%), and following maturity or the occurrence of an Event of Default at the floating per annum rate of interest announced from time to time by the Lender as its Prime Rate plus two and one-half percent (2.50%);

(c) any and all extensions, renewals and modifications of said Mortgage Note and said Company Revolving Note indebtedness and all substitutions therefor; and

(d) and any other sums, liabilities or indebtedness as set forth in the Loan Agreement, the Mortgage or any of the other Loan Documents, as the same may be amended from time to time.

4. Note. The term "Note" as defined in the Mortgage and the other Mortgagor Loan Documents is hereby modified to refer to all the obligations and liabilities of the Mortgagor and/or the Company to the Lender set forth in Section 3 of this Second Modification, including, but not limited to, the Mortgage Note, the Loan Agreement and the Company Revolving Note, together with any and all amendments, extensions, renewals and modifications thereof and all substitutions therefor. The Lender may, and prior to any transfer by the Lender of the Mortgage Note shall, attach a copy of this Second Modification to the original Mortgage Note and place an endorsement on the Mortgage Note making reference to the fact that such attachment has been made.

5. Continued Effectiveness of Loan Documents; Confirmation of Obligations. The Loan Documents shall remain in full force and effect as originally executed and delivered by the parties thereto, except as expressly modified and amended by this Second Modification. The Mortgagor hereby (i) restates, confirms and reaffirms all of its obligations under the Loan Documents, as modified by this Second Modification; (ii) acknowledges and agrees that the Lender, by entering into this Second Modification, does not waive any existing or future default or event of default under any of the Loan Documents, or any rights or remedies under any of the Loan Documents; (iii) acknowledges and agrees that the Lender has not heretofore

waived any default or event of default under any of the Loan Documents, or any rights or remedies under any of the Loan Documents; and (iv) acknowledges that the Beneficiary does not have any set-off, defense or counterclaim to the payment or performance of any of the Mortgagor's or the Beneficiary's obligations under the Loan Documents, as modified by this Second Modification.

6. Certifications, Covenants, Representations and Warranties. In order to induce the Lender to enter into this Second Modification, the Mortgagor hereby certifies and represents, and the Beneficiary hereby certifies, represents and warrants to the Lender that all certifications, covenants, representations and warranties contained in the Loan Documents and in all certificates heretofore delivered to the Lender in connection therewith are true and correct as of the date hereof, and all such certifications, representations and warranties are hereby remade and made to speak as of the date of this Second Modification.

7. Reaffirmation of Guaranties. The Beneficiary and each of the Guarantors hereby expressly (a) consents to the execution by the Mortgagor of the First Modification and to this Second Modification; (b) acknowledges that each of the Guaranties is hereby modified and amended so that all references in the Guaranties to (i) the "guaranteed debt" shall mean all of the from time to time obligations and liabilities of the Mortgagor and/or the Company to the Lender, including, but not limited to, the obligations and liabilities of the Mortgagor and/or the Company to the Lender set forth in Section 3 of this Second Modification, and (ii) the "Guaranty" shall mean each such Guaranty, as modified and amended by this Second Modification, (c) reaffirms all of his or its obligations under his or its respective Guaranty, as modified and amended by this Second Modification, in all respects; and (d) agrees that such obligations shall continue in full force and effect and shall not be discharged, limited, impaired or affected in any manner whatsoever.

8. References. All references in the Loan Documents and/or in this Second Modification to any one or more of the "Loan Documents" shall be deemed to be references to such Loan Documents, as modified and amended by this Second Modification.

9. Entire Agreement. This Second Modification sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Second Modification, and no covenants, promises, agreements, conditions or understandings, either oral or written, exist between the parties except as set forth herein.

10. Successors. The Loan Documents, as modified by this Second Modification, shall inure to the benefit of the parties hereto and to the Lender's successors and assigns, and shall be binding upon the parties hereto and their respective successors, assigns and legal representatives.

11. Severability. In the event any provision of this Second Modification shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

12. Amendments, Changes and Modifications. This Second Modification may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

13. Construction.

(a) The words "hereby", "hereof", "herein" and "hereunder", and other words of a similar import refer to this Second Modification as a whole and not to the individual Sections in which such terms are used.

(b) References to Sections and other subdivisions of this Second Modification are to the designated Sections and other subdivisions of this Second Modification as originally executed.

(c) The headings of this Second Modification are for convenience only and shall not define or limit the provisions hereof.

(d) Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

14. Execution of Counterparts. This Second Modification may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.


15. Governing Law. This Second Modification is prepared and entered into with the intention that the law of the State of Illinois shall govern its construction and enforcement.

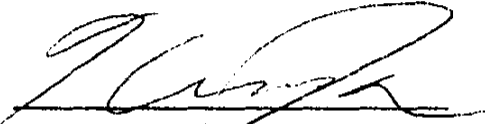
16. Trustee's Exculpation. This Second Modification is executed by Cole Taylor Bank, not personally but solely as Trustee, solely in the exercise of the authority conferred upon it as trustee as aforesaid, and no personal liability or responsibility shall be assumed by, nor at any time be asserted or enforced against it, its agents or employees on account thereof, or on account of any promises, covenants, undertakings or agreements herein, or in the Loan Documents contained, either express or implied; all such liability, if any, being expressly waived and released by the holder or holders of the Loan Documents and by all persons claiming by, through or under the Loan Documents or the holder or holders, owner or owners thereof, and by every person now or hereafter claiming any right or security thereunder. It is understood and agreed that the Trustee shall have no obligation to see to the performance or non-performance of any of the covenants or promises herein contained, and it shall not be liable for any action or non-action taken in violation of any of the covenants contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Second Modification Agreement to be executed as of the date set forth above.


COLE TAYLOR BANK, not personally but as Trustee under a Trust Agreement dated March 1, 1988 and known as Trust No. 88-120

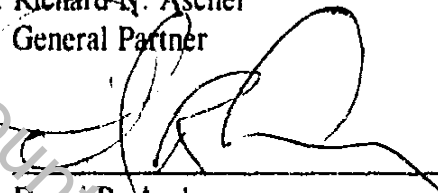
ATTEST:

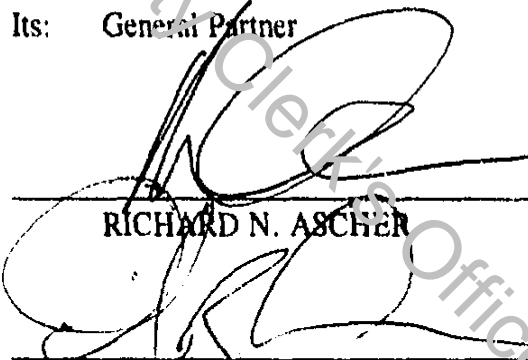
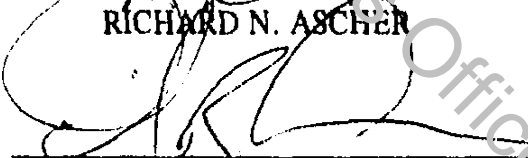
By:   
Name: MARITZA CASTILLO  
Title: TRUST OFFICER

By:   
Name: KENNETH E. PIEKUT  
Title: VICE PRESIDENT

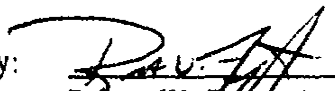
3033 WEST FLETCHER, an Illinois general partnership

By:   
Name: Richard N. Ascher  
Its: General Partner

By:   
Name: David R. Ascher  
Its: General Partner

  
RICHARD N. ASCHER  
  
DAVID R. ASCHER

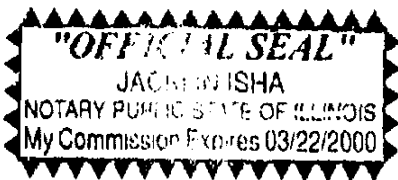
LASALLE NATIONAL BANK, a national banking association

By:   
Name: Robert W. Frenzel  
Title: Senior Vice President

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that KENNETH E. PIEKUT, the VICE PRESIDENT, and MARITZA CASTILLO, the TRUST OFFICER, of COLE TAYLOR BANK, an Illinois banking association, as trustee as aforesaid, who are 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 each acknowledged that as such VICE PRESIDENT and TRUST OFFICER they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said banking association, as trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 25<sup>th</sup> day of September, 1997.

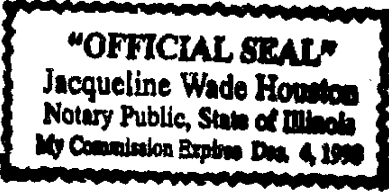


Jacquelin Wisha  
Notary Public  
My Commission Expires:

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that ROBERT W. FRENTZEL, a Senior Vice President of LASALLE NATIONAL BANK, a national banking association, who is 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 Senior Vice President, he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said banking association, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29<sup>th</sup> day of August, 1997.



Jacqueline Wade Houston  
Notary Public  
My Commission Expires:

12-4-98



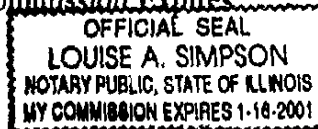
STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that RICHARD N. ASCHER, individually and as the general partner of 3033 WEST FLETCHER PARTNERSHIP, an Illinois general partnership, who is 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, individually and as such general partner, he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said general partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29th day of August, 1997.

Louise A Simpson  
Notary Public

My Commission Expires:



STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that DAVID R. ASCHER, individually and as the general partner of 3033 WEST FLETCHER PARTNERSHIP, an Illinois general partnership, who is 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, individually and as such general partner, he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said general partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29th day of August, 1997.

Louise A. Simpson  
Notary Public

My Commission Expires:

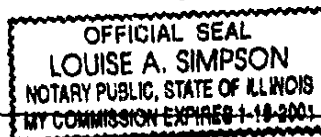


EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

LOTS 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 AND 66 IN THE SUBDIVISION OF BLOCK 1 IN ALBERT WISNER'S SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SAID SUBDIVISION OF BLOCK 1 RECORDED JUNE 14, 1888 AS DOCUMENT NUMBER 970114 IN BOOK 29 OF PLATS, PAGE 46 AND AS DETERMINED BY DECREE OF THE SUPERIOR COURT OF COOK COUNTY, ILLINOIS, ENTERED ON DECEMBER 9, 1915 IN CASE NUMBER 3175244 (CHANCERY RECORD 498, PAGE 450).

ALL OF THE EAST-WEST SIXTEEN FOOT PUBLIC ALLEY TOGETHER WITH ALL OF THE NORTHWESTERLY-SOUTHEASTERLY 16 FOOT PUBLIC ALLEY AND THE SECOND NORTH-SOUTH 16 FOOT PUBLIC ALLEY WEST OF NORTH SACRAMENTO AVENUE LYING EAST OF THE EAST LINE OF LOT 61 LYING NORTH AND NORTHEASTERLY OF THE NORTH AND NORTHEASTERLY LINES OF LOT 55 LYING WEST, SOUTHWESTERLY AND SOUTH LINES OF LOT 60, LYING SOUTH OF THE SOUTH LINES OF LOTS 56 TO 59 BOTH INCLUSIVE AND THE NORTH LINE OF SAID LOT 61 EXTENDED EAST 16 FEET AND LYING WEST OF THE EAST LINE OF SAID LOT 56, EXTENDED SOUTH 16 FEET ALL IN SUBDIVISION OF BLOCK 1 IN ALBERT WISNER'S SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS OF REAL ESTATE:

3033 West Fletcher  
Chicago, Illinois 60618

PERMANENT TAX IDENTIFICATION NUMBER:

13-25-107-001  
13-25-107-022

GKF:jh/September 5, 1997/70688.1