

97034947

THIS DOCUMENT PREPARED
BY AND AFTER RECORDING
RETURN TO

RUDNICK & WOLFE
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601
Attn: Janet B. Cory, Esq.

DEPT-01 RECORDING 641.00
T#7777 TRAN 7057 02/10/97 10:30:00
#9928 DR *-97-094947
COOK COUNTY RECORDER

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FIRST LOAN MODIFICATION AGREEMENT

THIS FIRST LOAN MODIFICATION AGREEMENT (this "Agreement") is made as of this 18th day of December, 1996, by and among ARTAIUS CORPORATION, an Illinois corporation ("Borrower") LEONARD SANDBERG ("Guarantor") and BANK OF AMERICA ILLINOIS, formerly known as Continental Bank, N.A., a national banking association ("Lender").

RECITALS:

A. Lender has heretofore made a loan to Borrower (the "Loan") in the original principal amount of One Million Four Hundred Thousand Dollars (\$1,400,000), pursuant to the terms of a Loan Agreement dated December 18, 1991 (the "Loan Agreement") between Borrower and Lender. The Loan is evidenced by a Mortgage Note dated as of December 18, 1991 from Borrower to Lender in the principal amount of the Loan (the "Note").

B. The Note is secured by, among other things, (i) that certain Mortgage, Assignment of Leases and Rents and Security Agreement dated December 18, 1991, and recorded in the Cook County Recorder's Office (the "Recorder") on December 20, 1991 as Document No. 91-670740 (the "Mortgage"), which Mortgage encumbers the real property legally described on Exhibit A attached hereto (the "Property"), (ii) that certain Collateral Assignment of Leases and Rents dated December 18, 1991 and recorded in the Recorder's office on December 20, 1991 as Document No. 91-670741 (the "Assignment of Leases"); (iii) a Guaranty of Payment dated December 18, 1991 from Guarantor to Lender (the "Guaranty"); and (iv) certain other loan documents (the Mortgage, the Assignment of Leases, the Guaranty, and the other documents evidencing and securing the Loan, in their original form and as amended hereby, are sometimes collectively referred to herein as the "Loan Documents").

C. Borrower and Lender desire to extend the maturity date of the Note and to amend the Loan Documents as hereinafter provided.

Box 416

Handwritten initials and date: 4/10/97

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AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreement by Lender to modify the Loan Documents as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree and amend the Loan Documents as follows:

1. Maturity Date. The Maturity Date of the Note is hereby extended to March 18, 1997. Any reference in the Note, the Mortgage or the other Loan Documents to the Maturity Date shall hereafter mean March 18, 1997.

2. Amendment to Loan Agreement. Exhibits A and B to the Loan Agreement shall each read "None".

3. Conditions Precedent. The extension of the Maturity Date is conditioned upon the receipt and approval by Lender of the following:

(a) UCC-1 and UCC-2 Financing Statements from Borrower, as Debtor, for the benefit of Lender, as Secured Party; and

(b) An endorsement ("Endorsement") to the loan title insurance policy previously issued by Ticor Title Insurance Company to Lender in connection with the Loan, which Endorsement shall be dated as of the date of the recording of this Agreement and shall (i) insure that the Mortgage, as amended hereby, is a valid first lien against title to the Property to the extent of the stated principal amount of the Note, and (ii) raise no exceptions to title other than such exceptions as Lender previously approved as Exhibit B to the Mortgage.

4. Expenses. Contemporaneously with the execution and delivery hereof, Borrower shall pay, or cause to be paid, the costs and expenses, including the fees of Lender's attorneys incurred in connection with this Agreement and the transactions contemplated hereby.

5. Acknowledgements. Borrower hereby acknowledges that (i) as of the date hereof, Borrower has no defense, offset or counterclaim with respect to the payment of any sum owed to Lender or with respect to any covenant in the Loan Documents; (ii) Borrower hereby remakes and ratifies all representations, warranties, covenants and agreements made by it in and upon the execution and delivery of the Mortgage and the other Loan Documents; and (iii) by entering into this Agreement, Lender does not waive any condition or obligation in the Loan Documents.

6. Reaffirmation of Loan Documents. Borrower and Guarantor hereby acknowledge and agree that except as specifically set forth herein, the terms of the Loan Documents shall remain in full force and effect and are hereby ratified, confirmed and approved in all respects.

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7. **Reaffirmation of Guaranty.** Guarantor hereby ratifies and reaffirms the Guaranty, and each of the terms and provisions contained therein, and agrees that said Guaranty shall continue in full force and effect following the execution and delivery of this Agreement and the modification of the other Loan Documents described herein. Guarantor represents and warrants to Lender that the Guaranty was on the date of the execution and delivery hereof, and continues to be, the valid and binding obligation of said Guarantor enforceable in accordance with its terms and that Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender under said Guaranty.

8. **Additional Representations and Warranties of Borrower.** Borrower hereby represents covenants and warrants to Lender as follows:

(a) To Borrower's knowledge, there is currently no default or event of default under the Mortgage or the Loan Documents and Borrower knows of no event or circumstance which with the giving of notice or passing of time, or both, would constitute a default under the Mortgage or the Loan Documents.

(b) Borrower shall not have outstanding or incur any direct or contingent debts or lease obligations (other than those to Lender), or become liable for the debts of others without Lender's written consent. This does not prohibit:

- (i) Acquiring goods, supplies, or merchandise on normal trade credit;
- (ii) Endorsing negotiable instruments received in the usual course of business;
- (iii) Other debts to Lender and debts and leases in existence on the date of this Agreement disclosed in Borrower's financial statement;
- (iv) Additional debts and lease obligations for the acquisition of fixed or capital assets, to the extent permitted elsewhere in this Agreement;
- (v) Additional debts and lease obligations for business purposes which, together with the debts permitted under subparagraph (iv), above, do not exceed a total principal amount of \$50,000 outstanding at any one time.

(c) Borrower shall promptly notify Lender in writing of:

- (i) any lawsuit over \$50,000 against Borrower;
- (ii) any substantial dispute between Borrower and any government authority;
- (iii) any failure to comply with this Agreement;

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- (iv) any material adverse change in Borrower's financial condition or operations;
 - (v) any change in Borrower's name, legal structure, place of business, or chief executive office if Borrower has more than one place of business.
- (d) Borrower shall not, without Lender's written consent:
- (i) engage in any business activities substantially different from Borrower's present business;
 - (ii) liquidate or dissolve Borrower's business;
 - (iii) enter into any consolidation, merger, pool, joint venture, syndicate, or other combination;
 - (iv) lease, or dispose of all or a substantial part of Borrower's business or Borrower's assets;
 - (v) acquire or purchase a business or its assets;
 - (vi) sell or otherwise dispose of any assets for less than fair market value, or enter into any sale and leaseback agreement covering any of its fixed or capital assets;
 - (vii) voluntarily suspend its business for more than 30 days in any 1 year period.

9. **Additional Defaults.** The following events shall be additional Events of Default under the Loan Agreement:

- (a) If the president or any other principal officer or majority stockholder of Borrower dies.
- (b) Any default occurs under any agreement in connection with any credit Borrower has obtained from anyone else or which Borrower has guaranteed.
- (c) Any guaranty, subordination agreement, security agreement, mortgage, deed of trust, or other document required by this Agreement is violated or no longer in effect.
- (d) Borrower fails to meet the conditions of, or fails to perform any obligation under any other agreement Borrower has with Lender or any affiliate of Lender.

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10. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the others in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered under the laws of the State of Illinois to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement and the Note. Except as expressly modified hereby and in the Note, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the Mortgage or any of the other Loan Documents contained in any of the Loan Documents shall be deemed to refer to such documents as amended hereby. Any reference in the Loan Documents to "Loan Documents" or any other term referring to any one or more of the Loan Documents shall be deemed to refer to such documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

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(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

11. **Consent to Jurisdiction.** To induce Lender to accept this Agreement, Borrower irrevocably agrees that, subject to Lender's sole and absolute election, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. THE BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON BORROWER, AND AGREES THAT ANY SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO BORROWER AT THE ADDRESS STATED ON THE SIGNATURE PAGE HEREOF AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

LENDER:

BANK OF AMERICA ILLINOIS

By: _____

Name: Thomas B. Maurice
Title: Vice President

BORROWER:

ARTAIUS CORPORATION

By: _____

Name: LEONARD SANDBERG
Title: Pres.

GUARANTOR

Leonard Sandberg

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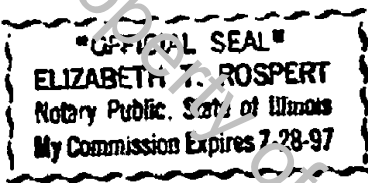
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Elizabeth T. Rospert, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Thomas Marvinae, a Vice President of Bank of America Illinois, 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 own free and voluntary act, and as the free and voluntary act of said Bank on behalf of said company, for the use and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 5th day of February, 1997.



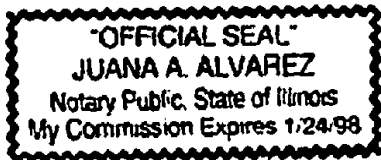
Elizabeth T. Rospert
Name: Elizabeth T. Rospert
Notary Public

[AFFIX NOTARIAL SEAL]

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Juana A. Alvarez, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Thomas Marvinae, the President of Artaius Corporation an Illinois corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me and acknowledged that he signed and delivered said instrument as his free and voluntary act and the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 5th day of February, 1997.



Juana A. Alvarez
Name: Juana A. Alvarez
Notary Public

[AFFIX NOTARIAL SEAL]

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, James A. Hernandez, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Leonard Sandberg, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me and acknowledged that he signed and delivered said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24th day of February, 1997.



James A. Hernandez
Name: James A. Hernandez
Notary Public

[AFFIX NOTARIAL SEAL]

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EXHIBIT A

THE LAND

BLOCK 7 (EXCEPT THE WEST 27 FEET) IN HARLEM 63RD RESUBDIVISION IN THE WEST 1/2 OF THE SOUTH WEST 1/4 OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 19-15-308-029

ADDRESS: 7131 WEST 61ST STREET
CHICAGO, ILLINOIS

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