

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN
TO:

Michael Weininger, Esq.
Katz Randall & Weinberg
333 West Wacker Drive
Suite 1800
Chicago, Illinois 60606
(312) 807-3800

KRW File No. 02441.29600

COOK COUNTY
RECORDER
JESSE WHITE
MAYWOOD OFFICE

This space reserved for Recorder.

**SECOND MODIFICATION OF
MORTGAGE AND SECURITY AGREEMENT**

This Modification (hereinafter referred to as "this Second Mortgage Modification") is made and entered into this 22nd day of January, 1998, by U.S. BANK NATIONAL ASSOCIATION f/k/a FIRST BANK NATIONAL ASSOCIATION, not personally but solely as Trustee under Trust Agreement dated September 18, 1987 and known as Trust No. 8616 (hereinafter referred to as "Trustee"), ELI'S CHICAGO' FINEST, INC., an Illinois corporation (hereinafter referred to as "Beneficiary", Trustee and Beneficiary are collectively referred to herein as "Mortgagor"), to and for the benefit of U.S. BANK NATIONAL ASSOCIATION f/k/a FIRST BANK NATIONAL ASSOCIATION (hereinafter referred to as "Mortgagee"), with an office at 701 Lee Street, Des Plaines, Illinois.

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

Katz Randall & Weinberg
333 West Wacker Drive, Suite 1800
Chicago, Illinois 60606
Attention: Michael Weininger

PROPERTY ADDRESS:
6701 Forest Preserve Drive
Chicago, Illinois

PERMANENT INDEX NUMBER(S):
13-18-409-208; 13-19-202-026;
13-19-202-027; 13-19-202-028

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RECITALS:

A. Beneficiary and Mortgagee entered into a certain Loan and Security Agreement dated October 18, 1995 as thereafter from time to time amended, whereby Lender agreed to make various loans to Beneficiary.

B. The Loan and Security Agreement was thereafter amended pursuant to (i) a Loan Modification Agreement dated as of March 31, 1997, (ii) a Second Loan Modification Agreement dated as of May 1, 1997, (iii) a Third Loan Modification Agreement dated as of June 30, 1997, (iv) a Fourth Loan Modification Agreement dated as of November 30, 1997 and (v) a Fifth Loan Modification dated as of January 22, 1998. The Loan and Security Agreement and the Amendments are referred to herein collectively as the "Loan Agreement."

C. Pursuant to the Loan Agreement, Beneficiary has executed and delivered to Lender: (i) a Construction Loan Note dated October 18, 1995 in the principal amount of \$7,000,000; (ii) a Term Note dated October 18, 1995 in the principal amount of \$200,000; (iii) a Line of Credit Note dated October 18, 1995 in the principal amount of \$1,500,000; (iv) a Letter of Credit Note dated February 1, 1996 in the principal amount of \$7,000,000; (v) an Equipment Term Note dated October 10, 1996 in the principal amount of \$300,000; (vi) a Second Term Note dated January 22, 1998 in the principal amount of \$200,000; and (vii) a Second Equipment Term Note dated January 22, 1998 in the principal amount of \$400,000 (collectively, the "Notes"), all of which are payable to the order of and delivered to Mortgagee whereby Beneficiary promises to pay the said principal amounts, or so much thereof as may be advanced by the holder or holders of

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the Notes from time to time, together with interest thereon, from the time and at the rate set forth therein, as therein provided at the office of Mortgagee, or at such other place as may be designated in writing by the legal holder or holders thereof, until the Maturity Date as defined in the Notes at which time the principal sums secured hereby and all accrued interest thereon shall immediately become due and payable.

D. The Notes and Liabilities (as that term is defined in the Loan Agreement) are secured by, among other instruments, (i) a Mortgage and Security Agreement dated October 18, 1995 which was recorded by the Cook County Recorder on December 22, 1995 as Document No. 95-892607 ("Original Mortgage") and (ii) an Amended and Restated Mortgage and Security Agreement dated February 1, 1996 which was recorded by the Cook County Recorder on March 19, 1996 as Document No. 96-210620. (The Original Mortgage and the Amended and Restated Mortgage are collectively referred to as the "Mortgage.")

E. Mortgagor and Mortgagee desire to enter into the Second Mortgage Modification, to secure (i) the payment of all principal and interest as and when the same become due and payable under the Notes and Liabilities (whether by lapse of time, acceleration or otherwise); (ii) the payment of all other indebtedness, obligations and liabilities which this Mortgage secures pursuant to any of its terms; and (iii) the performance of all covenants and agreements (and the accuracy of all representations and warranties) contained in this Mortgage and in any other instrument securing the Notes and Liabilities, including, without limitation, the Letter of Credit and Reimbursement Agreement dated as of February 1, 1996 ("Reimbursement Agreement"), all between

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Mortgagee and Beneficiary and delivered in connection with the indebtedness represented by the Notes and Liabilities (the Loan Agreement, the Reimbursement Agreement, the Mortgage and any other instrument securing the Notes or executed and delivered in connection with the indebtedness represented by the Notes and Liabilities are hereinafter referred to, collectively, as the "Security Documents").

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

1. **Incorporation of Recitals.** The Recitals are hereby incorporated into this Modification by reference as if fully set forth in this Paragraph 1.
2. **References to Note.** From and after the date hereof, (i) the Security Documents shall be deemed to secure the Notes and all Liabilities, and (ii) any and all references in the Security Documents to the Notes or Liabilities shall be deemed to refer to the Notes and Liabilities described herein and in the Loan Agreement.
3. **References to Security Documents.** Any and all references in the Security Documents to the Notes and Liabilities shall, from and after the date hereof, be deemed to refer to such Security Documents as modified by this Second Mortgage Modification.
4. **Reaffirmation of Representations and Warranties.** Trustee and Beneficiary hereby reaffirm as true and correct in all respects, as of the date hereof, any

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representations and warranties made by them and contained in the Notes and Security Documents.

5. **Reaffirmation of Covenants.** Trustee and Beneficiary do hereby reaffirm and agree to perform all of the terms, covenants, conditions and obligations applicable to such parties as set forth in the Notes, the Mortgage and other Security Documents as herein modified.

6. **Laws of Illinois.** This Modification shall be governed and construed under the laws of the State of Illinois.

7. **Full Force and Effect; Inconsistency.** Except as modified herein, the terms, conditions and covenants of the Mortgage and other Security Documents shall remain unchanged and otherwise in full force and effect. In the event of an inconsistency between this Modification and the Mortgage and other Security Documents, the terms herein shall first control.

8. **Trustee Exculpation.** This instrument is executed by U.S. BANK NATIONAL ASSOCIATION f/k/a FIRST BANK NATIONAL ASSOCIATION, not personally, but solely as Trustee, as aforesaid, in the exercise of the power and the authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by U.S. Bank National Association f/k/a First Bank National Association are undertaken by it solely as Trustee, as aforesaid, and not individually and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable

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against U.S. Bank National Association f/k/a First Bank National Association by reason of any of the terms, provisions, covenants and/or statements contained in this instrument.

IN WITNESS WHEREOF, the parties have caused this Modification to be executed pursuant to authority duly granted as of the date and year first written above.

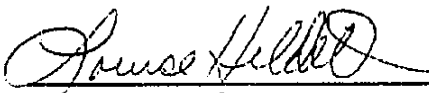
MORTGAGOR:

U.S. BANK NATIONAL ASSOCIATION f/k/a FIRST BANK NATIONAL ASSOCIATION, not personally but solely as Trustee under Trust Agreement dated September 18, 1987 and known as Trust No. 8616

ATTEST:



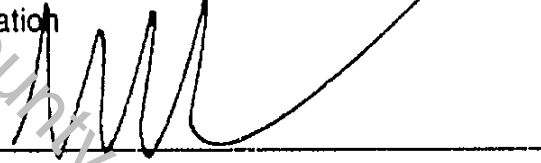
Its: Vice President

By: 

Its: Vice President

BENEFICIARY:

ELI'S CHICAGO'S FINEST, INC., an Illinois corporation

By: 

Its:

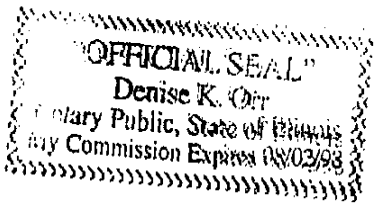
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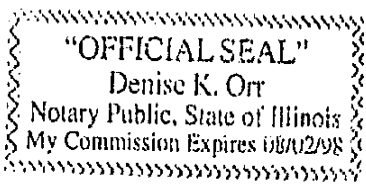
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, DENISE K. ORR, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that LOUISE HILDEBRAND, as ~~Vice President~~ President and WILLIAM H. WELSH, as ~~Vice President~~ Secretary of U.S. BANK NATIONAL ASSOCIATION f/k/a FIRST BANK NATIONAL ASSOCIATION, a national banking association, as Trustee under Trust Agreement dated September 18, 1987 and known as Trust No. 8616, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such ~~Vice President~~ President and ~~Secretary~~ Secretary of said Bank, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth; and said ~~Vice President~~ Secretary did then and there acknowledge that he, as custodian of the corporate seal of said Bank did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27th day of JANUARY, 1998.



Denise K. Orr
Notary Public



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CONSENT OF MORTGAGEE

The undersigned Mortgagee hereby consents to and approves the foregoing Modification of Mortgage and Other Security Documents.

DATED: 1-28-98

U.S. BANK NATIONAL ASSOCIATION f/k/a
FIRST BANK NATIONAL ASSOCIATION

ATTEST:

[Signature]

By: [Signature]
Its: V.P.

Its:

STATE OF ILLINOIS

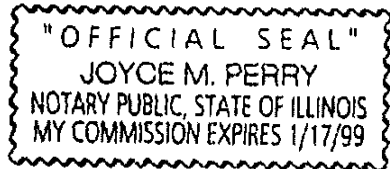
COUNTY OF COOK

)
) SS.
)

I, JOYCE M. PERRY, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that BRIAN PETERSON, VICE President and _____, as _____ Secretary of U.S. BANK NATIONAL ASSOCIATION f/k/a FIRST BANK NATIONAL ASSOCIATION, a national banking association, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE President and _____ Secretary of said Bank, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth; and said _____ Secretary did then and there acknowledge that he, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28 day of JANUARY, 1998.

[Signature]
Notary Public



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EXHIBIT "A"

Legal Description of Mortgaged Premises

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EXHIBIT ALEGAL DESCRIPTION

PARCEL 1

THAT PART OF THE SOUTH FRACTIONAL 1/2 OF SECTION 18, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE INDIAN BOUNDARY LINE AND BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE INDIAN BOUNDARY LINE, BEING ALSO THE SOUTHEASTERLY LINE OF WEST FOREST PRESERVE DRIVE, WITH THE EAST LINE OF NORTH OAK PARK AVENUE AS SHOWN ON THE PLAT OF SURVEY RECORDED JANUARY 11, 1935 AS DOCUMENT 11544080; THENCE SOUTH 01 DEGREES, 42 MINUTES, 45 SECONDS WEST ALONG THE EAST LINE OF SAID NORTH OAK PARK AVENUE, 72.56 FEET TO A POINT OF CURVATURE IN SAID LINE; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID NORTH OAK PARK AVENUE, BEING A LINE CURVED CONVEX WESTERLY, HAVING A RADIUS OF 2327.50 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 588.00 FEET (THE CHORD OF SAID ARC BEARS SOUTH 05 DEGREES, 29 MINUTES, 38 SECONDS EAST, 586.45 FEET); THENCE NORTH 26 DEGREES, 07 MINUTES, 04 SECONDS EAST, 311.80 FEET; THENCE NORTH 66 DEGREES, 00 MINUTES, 33 SECONDS EAST, 640.70 FEET TO A POINT FOR A PLACE OF BEGINNING, SAID POINT BEING THE INTERSECTION OF SAID LAST DESCRIBED LINE WITH A LINE DRAWN AT RIGHT ANGLES TO SAID INDIAN BOUNDARY LINE FROM A POINT ON SAID INDIAN BOUNDARY LINE, 602.83 FEET, AS MEASURED ALONG SAID INDIAN BOUNDARY LINE, NORTHEASTERLY OF THE INTERSECTION OF SAID BOUNDARY LINE WITH THE EAST LINE OF NORTH OAK PARK AVENUE, AS SHOWN ON PLAT OF SURVEY RECORDED JANUARY 11, 1935 AS DOCUMENT 11544080; THENCE NORTH 31 DEGREES, 21 MINUTES, 49 SECONDS WEST, ALONG SAID LAST DESCRIBED RIGHT ANGLE LINE, 503.09 FEET TO SAID INDIAN BOUNDARY LINE; THENCE NORTH 58 DEGREES, 38 MINUTES, 11 SECONDS EAST ALONG SAID INDIAN BOUNDARY LINE, 383.21 FEET TO THE MOST WESTERLY CORNER OF LAND TAKEN FOR HIGHWAY PURPOSES BY INSTRUMENT RECORDED APRIL 19, 1960 AS DOCUMENT 17832909; THENCE NORTH 70 DEGREES, 24 MINUTES, 44 SECONDS, EAST ALONG THE SOUTHEASTERLY LINE OF SAID LAND TAKEN FOR HIGHWAY PURPOSES BY INSTRUMENT RECORDED APRIL 19, 1960 AS DOCUMENT 17832909, 98.13 FEET; THENCE SOUTHEASTERLY ALONG A CURVED LINE CONVEX NORTHEASTERLY AND HAVING A RADIUS OF 44.50 FEET, AN ARC DISTANCE OF 15.69 FEET (THE CHORD OF SAID LAST DESCRIBED ARC BEARS SOUTH 57 DEGREES, 13 MINUTES, 05 SECONDS EAST, 25.33 FEET); THENCE SOUTHEASTERLY ALONG A CURVED LINE CONVEX NORTHEASTERLY AND HAVING A RADIUS OF 144.50 FEET, AN ARC DISTANCE OF 17.30 FEET (THE CHORD OF SAID ARC BEARS SOUTH 37 DEGREES, 14 MINUTES, 22 SECONDS EAST, 17.29 FEET); THENCE SOUTH 19 DEGREES, 28 MINUTES, 27 SECONDS EAST 84.68 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG A CURVED LINE CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 400.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 41.52 FEET TO A POINT OF REVERSE CURVATURE (THE CHORD OF SAID ARC BEARS SOUTH 22 DEGREES, 26 MINUTES, 50 SECONDS EAST, 41.49 FEET); THENCE SOUTHEASTERLY ALONG A CURVED LINE CONVEX NORTHEASTERLY, HAVING A RADIUS OF 800.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 33.40 FEET TO A POINT OF TANGENCY (THE CHORD OF SAID BEARS SOUTH 24 DEGREES, 13 MINUTES, 27 SECONDS EAST, 33.39 FEET); THENCE SOUTH 23 DEGREES, 01 MINUTES, 42 SECONDS EAST ALONG A LINE TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, 113.55 FEET; THENCE SOUTHEASTERLY ALONG A CURVED LINE CONVEX NORTHEASTERLY AND HAVING A RADIUS OF 900.00 FEET, AN ARC DISTANCE OF 222.28 FEET (THE CHORD OF SAID ARC BEARS SOUTH 15 DEGREES, 57 MINUTES, 03 SECONDS EAST, 221.71 FEET); THENCE SOUTH 58 DEGREES, 38 MINUTES, 11 SECONDS WEST 323.08 FEET; THENCE NORTH 89 DEGREES, 59 MINUTES, 17 SECONDS WEST, 76.83 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

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EXHIBIT A

LEGAL DESCRIPTION (CON'T)

AND PARCEL 2

LOT 14 (EXCEPT THE WEST 6 FEET THEREOF) AND LOTS 15, 16, 17
AND 18 IN BLOCK 2 IN ANDREW DUNNING'S SUBDIVISION OF THE
NORTH EAST ¼ OF THE NORTH EAST ¼ OF SECTION 19, TOWNSHIP 40
NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK
COUNTY, ILLINOIS.

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