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Cook County Recorder 43.00

**SECOND AMENDMENT OF CONSTRUCTION LOAN AGREEMENT,
MORTGAGE NOTE, MORTGAGE AND OTHER LOAN DOCUMENTS**

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THIS Second Amendment of Construction Loan Agreement, Mortgage Note, Mortgage and Other Loan Documents ("Second Amendment") is made as of ~~April~~ ^{May 19}, 1999, by and among CANAL STREET LOFTS L.L.C. (the "Borrower"), and **CHARLES HUZENIS, HARRY HUZENIS, BERNARD LEVITON, MICHAEL LERNER, LARRY WARNER and MICHAEL SUPERA** (collectively, the "Guarantors") (the Borrower and the Guarantors are sometimes hereinafter referred to collectively as the "Obligors") and **LASALLE BANK F.S.B.**, a federal savings bank ("Lender").

RECITALS:

A. Pursuant to the terms and conditions set forth in that certain Construction Loan Agreement (the "Construction Loan Agreement") between Borrower and Lender dated December 18, 1997 by and between Lender and Borrower, Lender agreed to loan to Borrower an amount not to exceed the sum of \$20,000,000 (the "Loan"). The Loan is evidenced by a certain Mortgage Note dated December 18, 1997 (the "Note"), made by Borrower in the original principal amount of \$20,000,000 payable to Lender.

B. Pursuant to a certain First Amendment of Construction Loan Agreement, Mortgage Note, Mortgage and Other Loan Documents (the "First Amendment") dated as of September 3, 1998, by and among Lender, the Borrower and the Guarantors, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office") on September 16, 1998, as Document No. 98826679, Lender agreed to, among other things, (i) increase the

This instrument was prepared by and, after recording, return to:
Schwartz, Cooper, Greenberger & Krauss
180 North LaSalle Street, Suite 2700
Chicago, Illinois 60601
Attn: Mark B. Butterman, Esq.

Permanent Real Estate Tax Index Nos.:
17-09-325-001

Common Address:
165 North Canal Street
Chicago, Illinois 60606

BOX 333-CTI

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maximum amount of the Loan that may be outstanding at any time from \$20,000,000 to \$30,000,000, (ii) increase the Maximum Aggregate Amount (as defined in the Construction Loan Agreement) which may be disbursed from \$53,477,138 to \$56,754,016, (iii) eliminate the phases of development as defined in Section 4.2 of the Construction Loan Agreement, (iv) eliminate references to phases from the definition of "Budget" in the Construction Loan Agreement and substituting a new Budget for the Budget attached as exhibit A to the Construction Loan Agreement, (v) eliminate the phased disbursement limitations set forth in Section 2.1 of the Construction Loan Agreement, and (vi) modify the balancing test set forth in Section 4.8 of the Construction Loan Agreement by eliminating references to phased budgets.

C. The Note, as amended by the First Amendment is hereinafter referred to as the "Amended Note".

D. The Amended Note is secured by the following documents, all of which are dated as of December 18, 1997:

(i) Mortgage (the "Mortgage") made by the Borrower to Lender and recorded in the office of the Recorder of Deeds of Cook County, Illinois ("Recorder's Office") on December 19, 1997, as Document No. 97957142 creating a first mortgage lien on certain improved real estate located in Cook County, Illinois, and legally described in Exhibit A hereto (the "Property");

(ii) Assignment of Rents and Leases made by the Borrower to Lender and recorded in the Recorder's Office on December 19, 1997, as Document No. 97957143 (the "Assignment of Rents"); and

(iii) Security Agreement made by the Borrower, as Debtor, to Lender, as Secured Party (the "Security Agreement").

The aforementioned documents, the Amended Note, the Construction Loan Agreement the Amended Guaranty (as hereinafter defined) and the other documents or agreements delivered to Lender to secure or evidence the Loan or to otherwise induce Lender to disburse the proceeds of the Loan are hereinafter referred to collectively as the "Amended Loan Documents".

E. The Guarantors have guaranteed repayment of the Loan to Lender pursuant to the provisions of a certain Guaranty dated December 18, 1997 (the "Guaranty") as amended by the First Amendment (said Guaranty, as amended by the First Amendment, is hereinafter referred to as the "Amended Guaranty").

F. The Borrower and the Guarantors have requested Lender to (i) increase the maximum aggregate amount which may be disbursed pursuant to the Construction Loan Agreement from \$56,754,016 to \$60,000,000; (ii) eliminate the provisions of Section 4.2 of the Construction Loan Agreement that prohibit the use of the Loan for conversion of the first floor of

the Existing Building into the Retail Space (as defined therein) and (iii) accept a revised Budget for the Work. Lender is willing to grant such requests, subject to the terms and conditions set forth below.

NOW, THEREFORE, in order to induce Lender to enter into the modifications described in Recital F above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, the Guarantors and Lender hereby agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are incorporated herein and made a part hereof.

2. **Maximum Aggregate Loan Amount.** The Maximum Aggregate Amount (as defined in the Construction Loan Agreement) which may be disbursed is hereby increased from \$56,754,016 to \$60,000,000 and all references in the Amended Loan Documents to the maximum aggregate amount of the Loan that may be disbursed shall be deemed to mean \$60,000,000.

3. **Elimination of Prohibition on Use of Loan Proceeds.** The second to last sentence of Section 4.2 of the Construction Loan Agreement, prohibiting the use of the Loan for development of the Retail Space, is hereby deleted. The remaining portions of Section 4.2 of the Construction Loan Agreement, as amended by the First Amendment, remain unmodified and in full force and effect.

4. **Revised Budget.** The definition of "Budget" in the Construction Loan Agreement is hereby modified by deleting the Budget set forth as Exhibit B to the First Amendment. In lieu thereof, all references in the Amended Loan Documents to the "Budget" shall mean the Budget set forth as Exhibit B hereto.

5. **Modification of Balancing Test.** Section 4.8 of the Construction Loan Agreement is hereby modified by substituting the Budget which is set forth as Exhibit B hereto for the Budget which is set forth as Exhibit B to the First Amendment. The remaining portions of Section 4.8 of the Construction Loan Agreement remain unmodified and in full force and effect.

6. **Required Deliveries.** Lender's consent to the increase of the maximum aggregate amount of the Loan, eliminate the prohibition on the use of the Loan for development of the Retail Space and the other agreements on the part of Lender set forth herein shall be subject to Lender (or Lender's nominee) having received the following in a form and substance acceptable to Lender on or before 6/15, 1999 (the "Amendment Termination Date"):

(a) This Amendment duly executed by the Obligors;

(b) An additional endorsement to Chicago Title Insurance Company Policy No. 007686198 (the "Title Policy") which (i) increases the amount of insurance to the maximum outstanding loan amount as modified by this amendment, (ii) amends the description of the Mortgage insured under the Title Policy to include this Amendment, (iii) amends the description of the Assignment of Rents to include this Amendment, (iv) extends the effective date of the Title Policy to the date of the recording of this Amendment, (v) includes no additional exceptions to title other than those that have been approved in writing by Lender, and (vi) states that all real estate taxes and assessments applicable to the Property which are due and payable as of the date of such endorsement have been paid in full;

(c) Evidence of authority of the Borrower to execute and deliver this Amendment, and

(d) Such other documents as Lender may reasonably require.

The Obligors' failure to deliver the aforementioned documents and items to Lender on or before the Amendment Termination Date shall, at the option of Lender, result in this Amendment (including all agreements and waivers of Lender contained herein) being null and void.

7. **Payment of Loan Fee and Additional Loan Expenses.** Concurrently with the execution and delivery of this Second Amendment by the Obligors, the Obligors shall pay to Lender a nonrefundable loan amendment fee in the amount of \$8,115. Furthermore, the Obligors hereby agree to pay all of Lender's reasonable attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Second Amendment, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees referred to in, necessitated by or otherwise relating to this Amendment (collectively, the "Additional Loan Expenses"). If the Additional Loan Expenses are not paid to Lender within five days after written demand therefor by Lender, the Additional Loan Expenses shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate (as defined in the Amended Note).

8. **References.** All references to the Construction Loan Agreement, Note, Amended Note, the Mortgage, the Guaranty, Amended Guaranty and the other Loan Documents contained in any of the Amended Loan Documents or the First Amendment shall be deemed to refer to each of such documents as amended by this Second Amendment.

9. **Definitions.** Except as otherwise expressly defined to the contrary herein, all capitalized terms used herein shall have the meaning ascribed to them in the Construction Loan Agreement.

10. **Defaults.** The Borrower and the Guarantors represent and warrant to Lender that, to the best knowledge of such person or entity, as of the date hereof no Event of Default or event

or condition which could become an Event of Default with the giving of notice or passage of time, or both, exists under the Amended Note or the other Amended Loan Documents. The Borrower and the Guarantors further acknowledge and agree that an Event of Default under the Amended Note and the other Amended Loan Documents shall be deemed to exist upon the occurrence of a breach of any of the representations, warranties or covenants set forth in this Second Amendment.

11. **No Defenses.** The Borrower and the Guarantors represent and warrant to Lender there is not any condition, event or circumstance existing, or any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending or threatened affecting the Borrower, any Guarantor or the Property, or which would prevent the Borrower or any Guarantor from complying with or performing his or its respective obligations under the Amended Note or the other Amended Loan Documents, and no basis for any such matter exists.

12. **Authority to Execute Amendment; No Conflict.** The Borrower and each Guarantor represents and warrants to Lender that he or it has full power and authority to execute and deliver this Second Amendment and to perform his or its respective obligations hereunder. Upon the execution and delivery hereof, this Second Amendment will be valid, binding and enforceable upon the Obligor in accordance with its terms. Execution and delivery of this Second Amendment does not and will not contravene, conflict with, violate or constitute a default under any applicable law, rule, regulation, judgment, decree or order or any agreement, indenture or instrument to which any Obligor is a party or is bound.

13. **Ratification of Liability.** Each Obligor hereby ratifies and confirms his or its respective liabilities and obligations under the Construction Loan Agreement, the Amended Note, the Amended Guaranty and the other Amended Loan Documents and the liens and security interests created thereby, and acknowledge that he or it has no defenses, claims or set-offs to the enforcement by Lender of their respective obligations and liabilities under the Amended Note, the Amended Guaranty and the other Amended Loan Documents.

14. **Amendment Binding.** This Second Amendment shall be binding on the Borrower, the Guarantors and their respective heirs, legatees, successors and permitted assigns, and shall inure to the benefit of Lender and its successors and assigns.

15. **Continued Effectiveness.** Except as expressly provided herein, the Construction Loan Agreement, the Amended Note and the other Amended Loan Documents shall remain in full force and effect in accordance with their respective terms.

16. **Counterparts.** This Second Amendment may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Second Amendment.

IN WITNESS WHEREOF, this Second Amendment has been entered into as of the date first above written.

LASALLE BANK F.S.B.

By: *Thomas Kearney*
its: *AUP*

CANAL STREET LOFTS L.L.C., an Illinois limited liability company

by HLL Corporation, an Illinois corporation, its Manager

By: *[Signature]*
Bernard Leviton, President

[Signature]
CHARLES HUZENIS

[Signature]
HARRY HUZENIS

[Signature]
BERNARD LEYTON

[Signature]
MICHAEL LERNER

[Signature]
LARRY WARNEF

[Signature]
MICHAEL SUPERA

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, CAROL KRAJEWSKI, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Thomas Kearney, the AVP of LASALLE BANK F.S.B. who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such AVP, 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 LASALLE BANK F.S.B., for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 19 day of MAY, 1999.



Carol Krajewski
NOTARY PUBLIC
(SEAL)

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Larry D. Bell, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Bernard Leviton, the President of HLL Corporation, an Illinois corporation, the Manager of CANAL STREET LOFTS L.L.C., an Illinois limited liability company who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President 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 CANAL STREET LOFTS L.L.C., for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 11 day of April, 1999.

Larry D. Bell
NOTARY PUBLIC
(SEAL)



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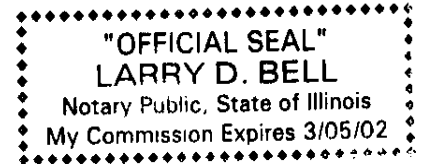
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Larry D. Bell, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **CHARLES HUZENIS** 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 he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 11 day of ^{May}~~April~~, 1999.

Larry D. Bell
NOTARY PUBLIC

(SEAL)



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Larry D. Bell, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **HARRY HUZENIS** 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 he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 11 day of ^{May}~~April~~, 1999.

Larry D. Bell
NOTARY PUBLIC

(SEAL)



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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Larry D. Bell, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **BERNARD LEVITON** 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 he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 11 day of ^{May}April, 1999.

[Signature]
NOTARY PUBLIC

(SEAL)



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Larry D. Bell, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **MICHAEL LERNER** 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 he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 11 day of ^{May}April, 1999.

[Signature]
NOTARY PUBLIC

(SEAL)



UNOFFICIAL COPY

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Larry D. Bell, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **LARRY WARNER** 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 he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 11 day of ^{May} ~~April~~, 1999.

[Signature]
NOTARY PUBLIC

(SEAL)



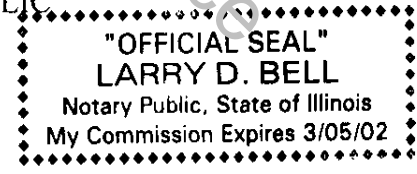
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Larry D. Bell, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **MICHAEL SUPERA** 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 he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 11 day of ^{May} ~~April~~, 1999.

[Signature]
NOTARY PUBLIC

(SEAL)



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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lots 2, 3, 6, 7, and 10 in Block 29 in original town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Real Estate Tax Index No.: 17-09-352-001

Common Address: 165 North Canal Street
Chicago, Illinois

Property of Cook County Clerk's Office

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EXHIBIT B

BUDGET

The amount stated in that certain Sworn Owner's Statement made by Canal Street Lofts L.L.C. to LaSalle Bank F.S.B. and dated May 17, 1999.

Property of Cook County Clerk's Office