

UNOFFICIAL COPY

99514801

5338/0183 26 001 Page 1 of 9
1999-05-27 15:02:31
Cook County Recorder 37.50

Prepared by & Mail to:
Diane R. Nagel
Manufacturers Bank
16255 So. Harlem Av.
Tinley Park, IL 60477



Property of Cook County Recorder's Office

MODIFICATION AND EXTENSION AGREEMENT

✗ FIRST MIDWEST TRUST COMPANY, N.A.,
AS SUCCESSOR TRUSTEE

THIS AGREEMENT made as of this 16th day of April, 1999 between MANUFACTURERS BANK, an Illinois Banking Corporation, f/k/a U.S. Bank, an Illinois Banking Corporation (hereinafter called First Party), and THE SOUTHERN PINES COMPANY and ✗ HERITAGE TRUST COMPANY, Trustee under Trust No. 96-5798 dated March 4, 1996, the Obligors under the Note and/or the present owner of the subject property (hereinafter collectively called Second Party), WITNESSETH:

THAT, WHEREAS, First Party is the owner of that certain Revolving Note in the amount of SEVEN HUNDRED FIFTY THOUSAND AND NO/100 (\$750,000.00) DOLLARS, dated April 16, 1996 and made by Second Party in favor of First Party, as modified and extended by Modification and Extension Agreements dated April 16, 1997 and April 16, 1998, respectively (the "Note"), secured by, among other things, a Commercial Mortgage, Security Agreement and Assignment of Leases and Rents dated April 16, 1996 and recorded in the Cook County Recorder's Office on November 18, 1996 as Document No. 96875292, encumbering the real estate described as follows:

See attached Exhibit "A" (Document No. 96875292)

AND, WHEREAS, the Note is also secured by (i) the collateral assignment of all the beneficial interest (including power of direction) in and to that certain Trust Agreement dated March 4, 1996 and known as Heritage Trust Company Trust No. 96-5798 (the "Assignment"), and (ii) the personal Guaranty of payment (collectively the "Guaranty") executed by Carl J. Vandenberg and Ronald R. Paul (hereinafter collectively called the "Guarantor"). The Mortgage, Assignment, and Guaranty, and all other documents executed in connection with the Note are hereinafter collectively referred to as the ("Loan Documents");

AND, WHEREAS, the parties hereto wish to further modify the terms of the Note and Mortgage by extending the maturity date thereof to July 16, 1999.

S-4
R-9
K
M-1
GMB

NOW THEREFORE, in consideration of the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The current principal balance due under the Note is \$440,000.00. (The land loan portion is \$235,000.00 and the line of credit is \$205,000.00.)

2. Contemporaneously with the execution of this Extension Agreement by First Party, Second Party shall pay to First Party all of First Party's attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification Agreement, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees necessitated by or otherwise relating to this Modification Agreement (the "Additional Fees"). If any of the Additional Fees are not paid at the time this Modification Agreement is executed by First Party, such Additional Fees shall be paid by Second Party within five days after written demand therefor by First Party, and if not timely paid, they shall bear interest from the date so incurred until paid at any annual rate of 13% per annum.

3. The maturity date of the Note and the Mortgage hereinbefore described shall be extended from April 16, 1999 to July 16, 1999. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Note, as hereby modified and amended.

4. It is a condition of this Agreement that the Second Party provide annual compiled business statements and Federal Tax Returns for The Southern Pines Company, together with annual personal financial statements and Federal Income Tax Returns for Carl J. Vandenberg and Ronald R. Paul.

5. In all other respects, the Note shall remain unchanged and in full force and effect, together with all documents, instruments or agreements that secure the Note. Specifically, it is understood and agreed that this instrument shall constitute and be an acknowledgment, confirmation and continuation of the rights, remedies, security interests and liens in favor of First Party existing under the Note and all documents, instruments or agreements that secure the Note.

6. Second Party and each Guarantor warrants and certifies that the indebtedness evidenced by the Note is a valid and subsisting debt of the Second Party and each Guarantor that is in all respects free and clear of all defenses, setoffs and counterclaims, both in law and equity. Furthermore, this instrument confirms, ratifies and assures a continuing lien against

any collateral set forth in the Loan Documents, and nothing herein shall in any manner impair the priority of any such lien.

7. Notwithstanding the foregoing, Second Party and each Guarantor expressly waives any defenses which they now have or may have or assert. Furthermore, in order to induce First Party to enter into this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Second Party and each Guarantor for themselves and their heirs, personal representatives, successors and assigns do hereby release, remise and forever discharge First Party, its directors, officers, employees, agents, successors and assigns of and from any and all setoffs, claims, counterclaims, demands, causes, causes of action, suits and/or judgments which they now have or may have against First Party and its directors, officers, employees, agents, successors and assigns including but not limited to matters arising out of the Note and/or any Loan Document, or arising out of any banking relationship existing between the parties.

8. Second Party and each Guarantor represent and warrant to First Party that, as of the date hereof, each of the representations and warranties set forth in the Loan Documents as amended hereby are and shall be and remain true and correct, that Second Party and each Guarantor is and shall remain in full compliance with all of the terms and conditions contained in the Loan Documents as amended hereby, and no event of default as defined in the Loan Documents shall have occurred and be continuing.

9. This instrument shall be construed and governed by and in accordance with the laws of the State of Illinois.

10. The obligations and liabilities of Second Party and each Guarantor under the Note and Loan Documents, as hereby amended, are joint and several.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, SECOND PARTY AND GUARANTOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AND EXTENSION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF FIRST PARTY IN ANY OTHER COURT IN WHICH FIRST PARTY SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SECOND PARTY AND GUARANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, SECOND PARTY AND GUARANTOR AND FIRST PARTY HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL

BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF SECOND PARTY AND GUARANTOR AND FIRST PARTY WITH RESPECT TO THIS MODIFICATION AND EXTENSION AGREEMENT, OR THE TRANSACTION RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, SECOND PARTY AND GUARANTOR AND FIRST PARTY HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY SECOND PARTY AND GUARANTOR OR FIRST PARTY MAY FILE A COPY OF THIS EXECUTED MODIFICATION AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF SECOND PARTY AND GUARANTOR AND FIRST PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, First Party has caused this instrument to be extended in its proper corporate name by its proper officers thereunto duly authorized, and its corporate seal to be hereunto affixed, and Second Party have hereunto set their hands and seals, all on the day and year first aforesaid.

FIRST PARTY:

MANUFACTURERS BANK

BY *Diane R. Nagel*

ATTEST _____

SECOND PARTY:

FIRST MIDWEST TRUST COMPANY, N.A.,
AS SUCCESSOR TRUSTEE
HERITAGE TRUST COMPANY, NOT
PERSONALLY BUT SOLELY AS TRUSTEE
UNDER TRUST AGREEMENT DATED
MARCH 4, 1996 AND KNOWN AS TRUST
NO. 96-5798

THE SOUTHERN PINES COMPANY

BY *Carl J. Vandenberg*
ATTEST *Ronald R. Paul*

SEE TRUSTEE'S RIDER ATTACHED HERETO

BY _____ AND MADE A PARTY HEREOF

CONSENTED TO BY GUARANTORS:

Carl J. Vandenberg
CARL J. VANDENBERG

Ronald R. Paul
RONALD R. PAUL

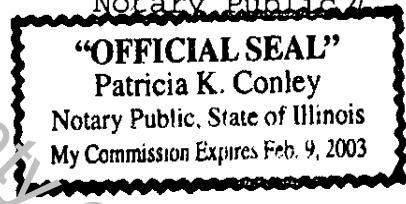
STATE OF ILLINOIS]
] SS
COUNTY OF COOK]

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that the above named

Deise R. Hoyt
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 severally acknowledged that they signed and delivered the said instrument as such officers of said Bank and caused the seal of said Bank to be thereunto affixed as their free and voluntary act and as the free and voluntary act and deed of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of April, 1999.

Patricia K. Conley
Notary Public



STATE OF ILLINOIS]
] SS
COUNTY OF COOK]

I, the undersigned, a Notary Public in and for the said County in the State aforesaid, DO HEREBY CERTIFY that the above named

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 severally acknowledged that they signed and delivered the said instrument as such officers of said Bank and caused the seal of said Bank to be thereunto affixed as their free and voluntary act and as the free and voluntary act and deed of said Bank as the Trustee aforesaid for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this _____ day of _____, 1999.

Notary Public

STATE OF ILLINOIS]
] SS
COUNTY OF COOK]

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that the above named Carol Underberg & Carol Hill 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 severally acknowledged that they signed and delivered the said instrument as such officers of said Corporation and caused the seal of said Corporation to be thereunto affixed as their free and voluntary act and as the free and voluntary act and deed of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of April, 1999.

Patricia K. Conley
Notary Public

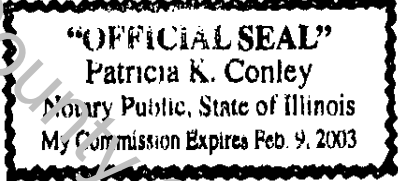


EXHIBIT "A"

That part of the Northeast 1/4 of Fractional Section 6, Township 36 North, Range 13, East of the Third Principal Meridian, lying North of the Indian Boundary Line described as follows: Beginning at a point 1215.59 feet South of the Northeast Corner of said Northeast 1/4, thence South 73 degrees 17 minutes 19 seconds West 296.94 feet, thence South 0 degrees 02 minutes 35 seconds West 200.76 feet, thence South 57 degrees 43 minutes 15 seconds East 141.08 feet, thence South 14 degrees 26 minutes 00 seconds West 211.16 feet; thence South 38 degrees 30 minutes 00 seconds West 161.51 feet, thence South 51 degrees 00 minutes 00 seconds West 243.20 feet, thence North 39 degrees 00 minutes 00 seconds West 106.67 feet to a point on a curve concaved to the South having a radius of 595.95 feet, thence Westerly on said curve an arc distance of 298.48 feet to its point of tangency, thence South 80 degrees 00 minutes 45 seconds West 336.58 feet to a point on the West line of the East Half of said Northeast 1/4, thence South 0 degrees 00 minutes 45 seconds West along said West line 336.58 feet to a point on the Northerly right of way of Interstate 80, thence Easterly along the said right of way on a curve concaved to the South having a radius of 5579.58 feet and an arc distance of 1390.34 feet to a point on the East line of the said Northeast 1/4, thence North 0 degrees 03 minutes 05 seconds East 907.26 feet to the point of beginning, all in Cook County, Illinois, containing 13.1935 acres, more or less.

Parcel 2

That part of Fractional Section 5, Township 35 North, Range 13 East of the Third Principal Meridian, North of the Indian Boundary Line described as follows: Beginning at a point 1295.16 feet South of the Northwest Corner of said Fractional Section 5, thence South 0 degrees 03 minutes 05 seconds West along the West line of said Fractional 5, 901.37 feet to its intersection with the Indian Boundary Line, thence North 45 degrees 49 minutes 28 seconds East along said Indian Boundary Line 572.68 feet to its intersection with the Westerly Take Line for Interstate 80, thence North 8 degrees 30 minutes 58 seconds East along said Take Line 279.53 feet, thence North 44 degrees 18 minutes 14 seconds West 161.80 feet, thence North 1 degree 09 minutes 18 seconds East 100.00 feet, thence North 88 degrees 18 minutes 16 seconds West 340.47 feet to the point of beginning (excepting that part described as follows: Beginning at the intersection of the West line of said Fractional Section 5 with the Indian Boundary Line; thence Northeast along the Indian Boundary Line a distance of 107.82 feet; thence Southeast along a straight line to a point in the West Line of said Fractional Section 5, said point being 37.77 feet North of the intersection of said West Line of Fractional Section 5 with the Indian Boundary Line; thence South along said West Line to the point of beginning), all in Cook County, Illinois, containing 6.4495 acres, more or less.

PIN: 31-06-201-007
31-06-201-009
31-06-201-012
31-06-201-017

Common Address: Approximately 21 acres of land
The Pines of Tinley Park Subdivision
Tinley Park, Illinois

Property of Cook County Clerk's Office

RIDER ATTACHED AND MADE A PART OF
MODIFICATION & EXTENSION AGREEMENT
DATED April 16, 1999

This Mortgage is executed by FIRST MIDWEST TRUST COMPANY, National Association, not personally but as Trustee or Successor Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said FIRST MIDWEST TRUST COMPANY, National Association, hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in said note contained shall be construed as creating any liability on the said FIRST MIDWEST TRUST COMPANY, National Association, personally to pay the said note or any interest that may accrue thereon, or any indebtedness accruing thereunder, or to perform thereon any covenant either express or implied herein contained, all such liability, if any, being expressly waived by Trustee and by every person now or hereafter claiming any right or security hereunder, and that so far as the FIRST MIDWEST TRUST COMPANY, National Association, personally are concerned, the legal holder or holders of said note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof by the enforcement of the lien hereby created in the manner herein and in said note provided or by action to enforce the personal liability of the guarantor, if any.

In witness whereof, the grantor, not personally but as trustee as aforesaid, has caused these presents to be signed by its Trust Officer and its corporate seal to be hereunto affixed and attested by its Trust Officer this 5th day of May, 1999.

FIRST MIDWEST TRUST COMPANY, N.A.
as Trustee or Successor Trustee under Trust No. 96-5798
and not personally.

By: Nancy K. Forrest
Trust Officer

Attest: Joyce V. Cunningham
Trust Officer

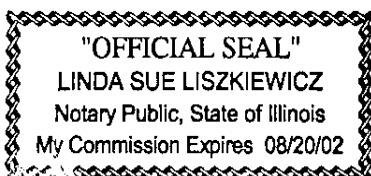
STATE OF ILLINOIS

SS:

COUNTY OF COOK

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Nancy K. Forrest, Trust Officer of FIRST MIDWEST TRUST COMPANY, National Association, and Joyce V. Cunningham, the attesting Trust Officer thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer and the attesting Trust Officer 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 Trust Company, for the uses and purposes therein set forth; and the said attesting Trust Officer did also then and there acknowledge that he as custodian of the corporate seal of said Trust Company, did affix the said corporate seal of said Trust Company instrument as his own free and voluntary act, and as the free and voluntary act of said Trust Company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 5th day of May, A.D., 1999.



Linda Sue Liszkiewicz
NOTARY PUBLIC