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1999-07-06 14:15:47
Cook County Recorder 35.50



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COOK COUNTY
RECORDER
EUGENE "GENE" MOORE
SKOKIE OFFICE

Property of Cook County Clerk's Office

MODIFICATION AND EXTENSION AGREEMENT

ATTACHED HERETO AND MADE A PART

THEREOF



THIS INSTRUMENT WAS PREPARED BY
MARY LOU MIRANDA
4433 W. TOUHY AVE.
LINCOLNWOOD, IL 60646

8/2
35538
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no

FIFTH AMENDMENT TO AMENDED AND RESTATED MORTGAGE AND TO THE ASSIGNMENT OF RENTS

LINCOLNWOOD PROPERTY

THIS FIFTH AMENDMENT TO AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT and FINANCING STATEMENT (herein sometimes called "Amendment") is made as of February 20, 1999 by American National Bank and Trust Company of Chicago as Trustee under Trust Agreement dated December 22, 1980 and known as Trust Agreement Number 51686 ("Mortgagor") having its principal office at 33 N. LaSalle Street, Chicago, IL in favor of Bank of Lincolnwood located at 4433 W. Touhy Avenue, Lincolnwood, IL 60646 ("Mortgagee").

RECITALS:

A. Mortgagee has made a loan to Mortgagor et al which is secured by that certain Amended and Restated Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement originally recorded as (the "Mortgage") Document No. 93251279 as heretofore amended, modified, extended and supplemented, which is a lien upon the property legally described in Exhibit A, attached hereto.

B. Mortgagee and Mortgagor have amended the revolving note secured by the Mortgage to extend the term thereof and desire to amend the Mortgage to secure said note as amend.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and for \$10.00 and other good and valuable consideration in hand paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1. Borrower hereby represents and warrants to Lender that the foregoing Recitals are (a) true and accurate, and (b) an integral part of this Amendment. Borrower and Lender hereby agree that all of the Recitals of this Amendment are hereby incorporated into this Amendment and made a part hereof. Any term not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

2. Recitals A and B of the Mortgage are hereby deleted in their entirety and the following is substituted therefor:

A. Land. Mortgagor is the owner of the land (the "Land") described on Exhibit A attached hereto, together with all improvements thereon.

B. Loans. Mortgagor and The Malnati Organization, Inc., Malu Limited Corporation, Luma Limited, Moolah Inc. and American National Bank and Trust Company of Chicago, under Trust Agreement Number 64210 (the "Borrowers"), are indebted to Mortgagee pursuant to the terms of two promissory notes (collectively the "Notes") evidencing indebtedness described as follows: (i) a revolving loan in the maximum principal amount of \$600,000 bearing interest at the Prime Rate announced by Bank of Lincolnwood with a Maturity

7 Pgs Penalty

date of February 28, 2000, which loan may hereafter be amended, restated, supplemented or extended; provided that such maturity date shall not be extended to a date which is later than February 28, 2004, and (ii) a term loan in the original principal amount of \$475,567.59, bearing interest at the rate of 7.25% per annum payable to the order of the Mortgagee, and due and payable in full if not sooner paid on or before February 28, 2004, subject to acceleration as provided in the Notes, this Mortgage, or the other Loan Documents, defined below. All principal and interest on the Notes are payable in lawful money of the United States of America at the office of the Mortgagee in Chicago, Illinois, or at such place as the holder thereof may from time to time appoint in writing. The indebtedness evidenced by the Notes is sometimes collectively referred to therein as the Loan.

3. As used in the Mortgage and the Assignment of Rents each and every reference of a "Note" or the "Notes" shall mean any one or more of the notes comprising the Note, as amended, as the broadest possible reading shall allow.

4. Except as expressly amended hereby, the Mortgage and the Assignment of Rents shall remain in full force and effect. The Mortgage and the Assignment of Rents and all rights and powers created thereby and thereunder or under such other documents are in all respects ratified and confirmed. From and after the date hereof, the Mortgage shall be deemed to be amended and modified as herein provided, but, except as so amended and modified, the Mortgage shall continue in full force and effect and the Mortgage as previously amended and the applicable portions of this Amendment shall be read, taken and construed as one and the same instrument. On and after the date hereof, the term the "Mortgage" as used in the Notes, the Loan Agreement and all other Loan Documents shall mean the Mortgage as amended hereby. From and after the date hereof, the Assignment of Rents shall be deemed to be amended and modified as herein provided, but, except as so amended and modified, the Assignment of Rents shall continue in full force and effect and the Assignment of Rents as previously amended and the applicable provision of this Amendment shall be read, taken and construed as one and the same instrument. On and after the date hereof, the term the "Assignment of Rents" as used in the Note, the Loan Agreement and all other Loan Documents shall mean the Assignment of Rents as amended hereby. Nothing contained in this Amendment shall be deemed to be a commitment by Mortgagee to extend the maturity date of the revolving loan or to make any financial accommodation to Mortgagor.

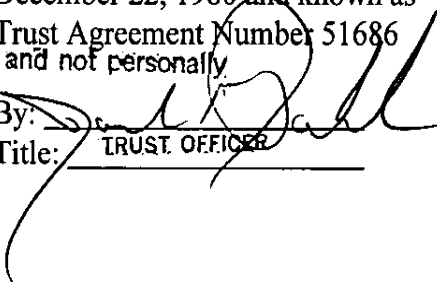
5. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee hereunder, while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertaking and agreements by said Trustee or for the purpose of or with the intention of binding said Trustee personally, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the American National Bank and Trust Company of Chicago on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, the parties have executed this Amendment as of February 20, 1999.

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

MORTGAGOR:

American National Bank and Trust Company of Chicago as Trustee under Trust Agreement dated December 22, 1980 and known as Trust Agreement Number 51686 and not personally

By: 
Title: TRUST OFFICER


Attest:

Attestation not required by American National Bank and Trust Company of Chicago Bylaws

By: _____
Title: _____

ACCEPTED BY MORTGAGEE:

BANK OF LINCOLNWOOD

BY: 
Stewart Anderson, Senior Vice President

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JOINDER

This Joinder is executed by The Malnati Organization, Inc. ("Malnati"), Malu Limited Corporation ("Malu"), Luma Limited ("Luma"), Moolah Inc. ("Moolah"), joint and several makers of the Notes, for the purpose of joining in that certain Fifth Amendment to Amended and Restated Mortgage, Assignment of Rents and Leases, Security Agreement and Financing Statement granted by American National Bank and Trust Company of Chicago as Trustee under Trust Agreement dated May 1, 1985 and known as Trust Agreement Number 51686 ("Trust 51686") in favor of Bank of Lincolnwood dated January 15, 1994 which is a lien on the property commonly known as 56649 N. Lincoln Avenue, Lincolnwood, 11. All representations, warranties, covenants and agreements of Mortgagor under the terms of said Mortgage are hereby made by Malnati, Malu, Luma, and Moolah, as if fully set forth herein, for the purpose of binding Malnati, Malu, Luma and Moolah personally for the payment of all such liabilities and the performance of all such obligations.

The Malnati Organization, Inc.

By: [Signature]
Title: Pr.

By: Matmalt
Title: Sec

Malu Limited Corporation

By: [Signature]
Title: Pr.

By: Matmalt
Title: Sec

Luma Limited

By: [Signature]
Title: Pr.

By: Matmalt
Title: Sec

Moolah Inc.

By: [Signature]
Title: Pr.

By: Matmalt
Title: Sec

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EXHIBIT A

Description of the Land

Lots 5, 6, 7, 8 and 9 in block 16 in Lincoln Avenue Gardens a subdivision of part of the north 1/2 of the south west 1/4 of section 35, township 41 north, range 13 east of the third principal meridian, in Cook County, Illinois

Permanent Index Number(s):

10-35-312-005
10-35-312-006
10-35-312-007
10-35-312-008
10-35-312-015

Common Address:

6649 N. Lincoln Avenue
Lincolnwood, IL

Property of Cook County Clerk's Office

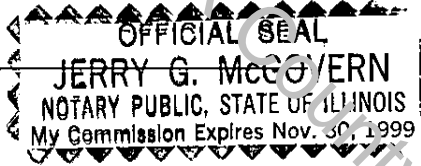
STATE OF Ill.
COUNTY OF Cook) SS:

I, Jerry G. McGovern a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 31st day of March, 1999 personally appeared before me Stewart Anderson, the Senior Vice President Bank of Lincolnwood, to me personally well known and known to be the person who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that he is the Senior Vice President of Bank of Lincolnwood, and that he signed and delivered the same in behalf of Bank of Lincolnwood, as his and its free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.

[Signature]
Notary Public

My commission expires: _____



Cook County Clerk's Office