

8

WHEN RECORDED RETURN TO:

Jeanne M. Burton
Legal Assistant
Thompson & Knight, L.L.P.
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201

2000 070082

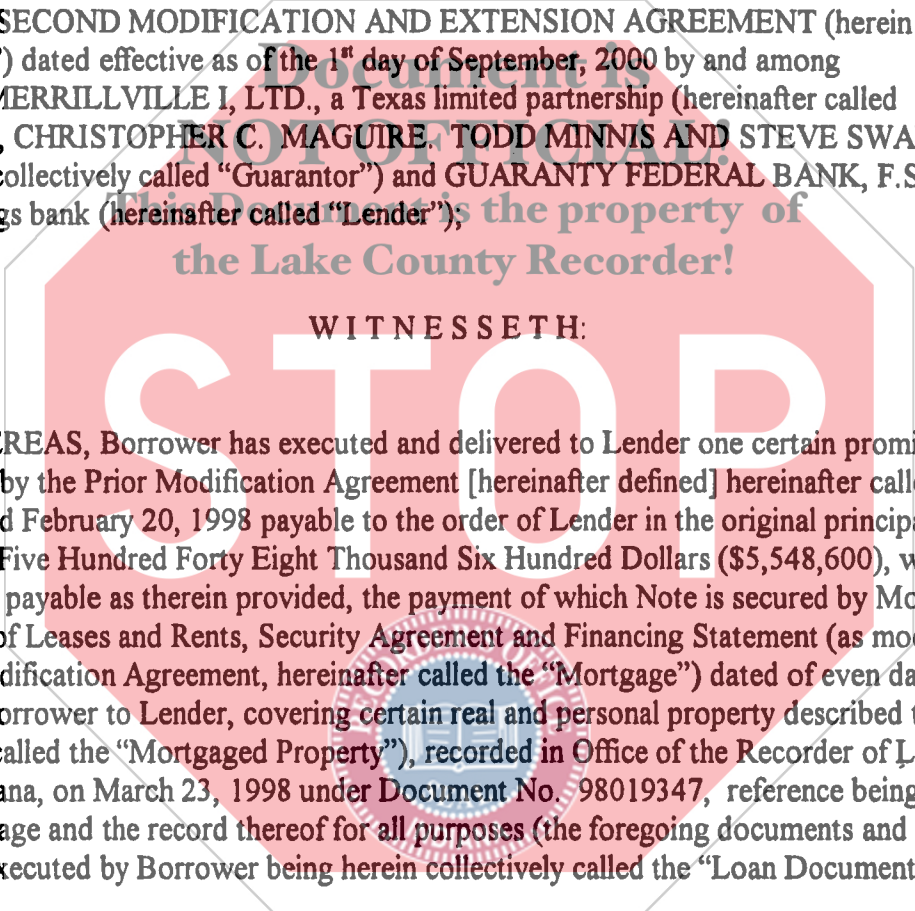
STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2000 SEP 26 AM 10:44

MORRIS W. CARTER
RECORDER

SECOND MODIFICATION AND EXTENSION AGREEMENT

This SECOND MODIFICATION AND EXTENSION AGREEMENT (herein called this "Agreement") dated effective as of the 1st day of September, 2000 by and among CYPRESS/MERRILLVILLE I, LTD., a Texas limited partnership (hereinafter called "Borrower"), CHRISTOPHER C. MAGUIRE, TODD MINNIS AND STEVE SWANSON (hereinafter collectively called "Guarantor") and GUARANTY FEDERAL BANK, F.S.B., a federal savings bank (hereinafter called "Lender"),



WITNESSETH:

WHEREAS, Borrower has executed and delivered to Lender one certain promissory note (as modified by the Prior Modification Agreement [hereinafter defined] hereinafter called the "Note") dated February 20, 1998 payable to the order of Lender in the original principal sum of Five Million Five Hundred Forty Eight Thousand Six Hundred Dollars (\$5,548,600), with interest and principal payable as therein provided, the payment of which Note is secured by Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement (as modified by the Prior Modification Agreement, hereinafter called the "Mortgage") dated of even date with the Note from Borrower to Lender, covering certain real and personal property described therein (hereinafter called the "Mortgaged Property"), recorded in Office of the Recorder of Lake County, Indiana, on March 23, 1998 under Document No. 98019347, reference being here made to the Mortgage and the record thereof for all purposes (the foregoing documents and all other documents executed by Borrower being herein collectively called the "Loan Documents");

WHEREAS, Guarantor and Todd Lapinski guaranteed payment of the Note and performance of certain obligations pursuant to the Guaranty (herein so called) dated of even date with the Note; and with the consent of Guarantor, Lender released Todd Lapinski from his obligations under the Guaranty;

WHEREAS, the parties have executed and delivered that certain Modification Agreement (the "Prior Modification Agreement") recorded under Document No. 99087846, in the Office of the Recorder of Lake County, Indiana;

WHEREAS, the Note became due and payable on August 20, 2000;

FC 22470A: 91

HOLD FOR FIRST AMERICAN TITLE

24.00
PC

WHEREAS, Borrower has requested that Lender extend the term of the Note to August 20, 2001 and to modify the budget for the loan evidenced by the Note (the "Loan") as hereinafter set forth and Lender is willing to do so on the terms and conditions herein set forth; and

WHEREAS, Lender is the owner and holder of the Note and Borrower is the owner of the legal and equitable title to the Mortgaged Property not previously released from the lien of the Mortgage; and

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

1. The term of the Note is hereby extended to August 20, 2001. The references to the maturity date of the Note as set forth in the Note, in Section 1.1 of the Mortgage and in other Loan Documents is hereby amended to reflect August 20, 2001. The liens, security interests, assignments and other rights evidenced by the Mortgage and other Loan Documents are hereby renewed and extended to secure payment of the Note as extended hereby. Lender hereby acknowledges receipt of an extension fee in the sum of \$27,323 as the consideration for the extension granted in this Agreement.

2. Lender and Borrower acknowledge and agree that the unpaid principal balance of the Note as of September 1, 2000 is \$5,303,907.36, with interest paid through and including said date. Borrower and Lender hereby agree that the sum of \$160,701 remains unfunded under the Note and that such sum is hereby reallocated to the interest reserve line item on the budget for the Loan. From and after the date hereof Lender shall have no obligation to disburse additional proceeds of the Note except in payment of accrued interest on the Loan.

3. Borrower and Guarantor each hereby represents and warrants that (a) Borrower is the sole legal and beneficial owner of the remainder of the Mortgaged Property covered by the Mortgage; (b) the execution and delivery of this Agreement do not contravene, result in a breach of or constitute a default under any mortgage, loan agreement, indenture or other contract or agreement to which Borrower or either Guarantor is a party or by which Borrower or any of its properties, or Guarantor or any of its, may be bound (nor would such execution and delivery constitute such a default with the passage of time or the giving of notice or both) and do not violate or contravene any law, order, decree, rule or regulation to which Borrower or either Guarantor is subject; (c) this Agreement constitutes the legal, valid and binding obligations of Borrower and Guarantor enforceable in accordance with its terms; (d) the execution and delivery of, and performance under this Agreement are within Borrower's power and authority without the joinder or consent of any other party and have been duly authorized by all requisite action and are not in contravention of law or Borrower's partnership agreement, or any indenture, agreement or undertaking to which Borrower or Guarantor is a party or by which any of them is bound; and (e) to the best of Borrower's and Guarantor's knowledge there exists no uncured default under the Letter Loan Agreement pursuant to which the Loan was made, the Note, the Mortgage or any other Loan Document. Borrower and Guarantor agree that the indemnification provisions contained in the Loan Documents shall apply to any loss, claim, damage, liability or expense

(including without limitation attorneys' fees) incurred as a result of any representation or warranty made herein proving to be untrue in any respect.

4. Borrower and Guarantor, upon request from Lender, agree to execute such other and further documents as may be reasonably necessary or appropriate to consummate the transactions contemplated herein or to perfect the liens and security interests intended to secure the payment of the loan evidenced by the Note.

5. If Borrower or Guarantor shall fail to keep or perform any of the covenants or agreements contained herein or if any statement, representation or warranty contained herein is false, misleading or erroneous in any material respect, Borrower shall be deemed to be in default under the Mortgage and Lender shall be entitled at its option to exercise any and all of the rights and remedies granted pursuant to the Mortgage or any other Loan Document or to which Lender may otherwise be entitled, whether at law or in equity.

6. Contemporaneously with the execution and delivery hereof, Borrower shall, at its sole cost and expense, obtain and deliver to Lender an Endorsement of the Mortgagee Title Policy insuring the lien of the Mortgage, under the applicable title insurance rules and regulations, in form and content acceptable to Lender, stating that the company issuing said Mortgagee Title Policy will not claim that policy coverage has terminated or that policy coverage has been reduced, solely by reason of the execution of this Agreement and maintaining the liability thereunder for the period of limitation applicable to the indebtedness secured by the lien of the Mortgage calculated from the renewed and extended maturity date as provided herein.

7. Except as provided herein, the terms and provisions of the Note, the Mortgage and the other Loan Documents shall remain unchanged and shall remain in full force and effect. Any modification herein of the Note, the Mortgage and the other Loan Documents shall in no way affect the security of the Mortgage and the other Loan Documents for the payment of the Note. The promissory note described in the Mortgage and other Loan Documents as the note secured thereby shall hereafter mean the Note as modified by this Agreement. The Note, the Mortgage and the other Loan Documents as modified and amended hereby are hereby ratified and confirmed in all respects. All liens, security interests, mortgages and assignments granted or created by or existing under the Mortgage and the other Loan Documents remain unchanged and continue, unabated, in full force and effect, to secure Borrower's obligation to repay the Note.

8. Borrower hereby acknowledges that the liens and security interests created and evidenced by the Mortgage are valid and subsisting. Borrower and Guarantor further acknowledge and agree that there are no offsets, claims or defenses to the Note or the Mortgage or any other Loan Documents, or Guarantor's obligations under the Guaranty.

9. This Agreement supersedes and merges all prior and contemporaneous promises, representations and agreements. No modification of this Agreement, the Note, the Mortgage or any other Loan Document, or any waiver of rights under any of the foregoing, shall be effective unless made by supplemental agreement, in writing, executed by Lender and Borrower. Lender and Borrower further agree that this Agreement may not in any way be explained or

supplemented by a prior, existing or future course of dealings between the parties or by any prior, existing, or future performance between the parties pursuant to this Agreement or otherwise.

10. Any notice or communication required or permitted hereunder shall be given in accordance with the provisions of the Letter Loan Agreement with respect to Borrower and Lender and in accordance with the Guaranty with respect to Guarantor and Lender.

11. Contemporaneously with the execution and delivery hereof, Borrower shall pay, or cause to be paid, all costs and expenses incident to the preparation hereof and the consummation of the transactions specified herein, including without limitation title insurance policy endorsement charges, recording fees and fees and expenses of legal counsel to Lender.

12. If any covenant, condition, or provision herein contained is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not in any way affect any other covenant, condition or provision herein contained.

13. It is expressly agreed by the parties hereto that time is of the essence with respect to this Agreement.

14. This Agreement and the rights and duties of the parties hereunder shall be governed for all purposes by the law of the State of Texas and the law of the United States applicable to transactions within said State.

15. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

16. Guarantor hereby declares to and agrees with Lender that all of the obligations of Guarantor under the Guaranty are and shall be unaffected by said transactions and that the Guaranty is hereby ratified and confirmed in all respects.

17. Borrower, Guarantor and Lender hereby take notice of and agree to the following:

A. PURSUANT TO SUBSECTION 26.02(b) OF THE TEXAS BUSINESS AND COMMERCE CODE, A LOAN AGREEMENT IN WHICH THE AMOUNT INVOLVED THEREIN EXCEEDS \$50,000 IN VALUE IS NOT ENFORCEABLE UNLESS THE AGREEMENT IS IN WRITING AND SIGNED BY THE PARTY TO BE BOUND OR BY THAT PARTY'S AUTHORIZED REPRESENTATIVE.

B. PURSUANT TO SUBSECTION 26.02(c) OF THE TEXAS BUSINESS AND COMMERCE CODE, THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THE LOAN DOCUMENTS SHALL BE DETERMINED SOLELY FROM THE LOAN DOCUMENTS, AND ANY PRIOR ORAL AGREEMENTS BETWEEN THE PARTIES ARE SUPERSEDED BY AND MERGED INTO THE LOAN DOCUMENTS.

C. THE NOTE, THE MORTGAGE, THE ASSIGNMENT OF LEASES AND RENTS, THE OTHER LOAN DOCUMENTS AND THIS AGREEMENT REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES THERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, this Agreement is executed on the respective dates of acknowledgment set forth below but effective for all purposes as of the date first above written.

CYPRESS/MERRILLVILLE I, LTD., a Texas
limited partnership

By: CYPRESS/MERRILLVILLE
MANAGEMENT, INC., a Texas
corporation, General Partner

By:


Name: Christopher C. Maguire
Title: President

BORROWER


Christopher C. Maguire



Todd Minnis


Steve Swanson

GUARANTOR

GUARANTY FEDERAL BANK, F.S.B., a federal
savings bank

By:


Name: Robert R. Stone
Title: Senior Vice President and Division
Manager

LENDER

STATE OF TEXAS)
) SS:
COUNTY OF DALLAS)

Before me, a Notary Public in and for said County and State, personally appeared Christopher C. Maguire, by me known and by me known to be the President of Cypress/Merrillville Management, Inc., a Texas corporation, the general partner of Cypress/Merrillville I, Ltd., a Texas limited partnership, who acknowledged execution of the foregoing Modification and Extension Agreement for and on behalf of said partnership and who, being first duly sworn, stated that he has been duly empowered by said corporation, in its capacity as general partner of the partnership to execute the same and that all representations contained therein are true to the best of his knowledge and belief.

WITNESS my hand and Notarial Seal this 13 day of Sept., 2000.



M. Biagioni
Notary Public, State of Texas

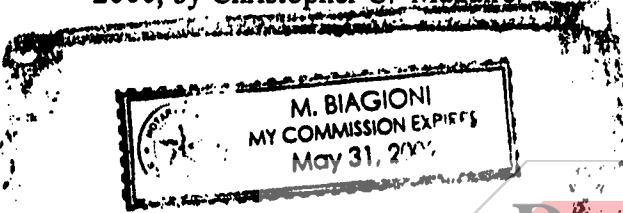
Merrilee Biagioni
(Printed Signature)

My Commission Expires: May 31, 2002
My County of Residence: Dallas



THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

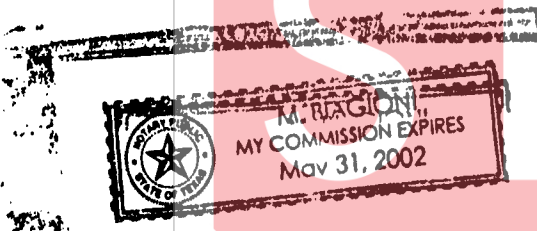
The foregoing instrument was acknowledged before me this 13 day of Sept, 2000, by Christopher C. Maguire.



M. Biagioni
Printed Name: Merilee Biagioni
Notary Public: State of Texas
Commission Expires: May 31, 2002

THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

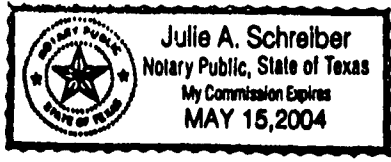
The foregoing instrument was acknowledged before me this 13 day of Sept, 2000, by Todd Minnis.



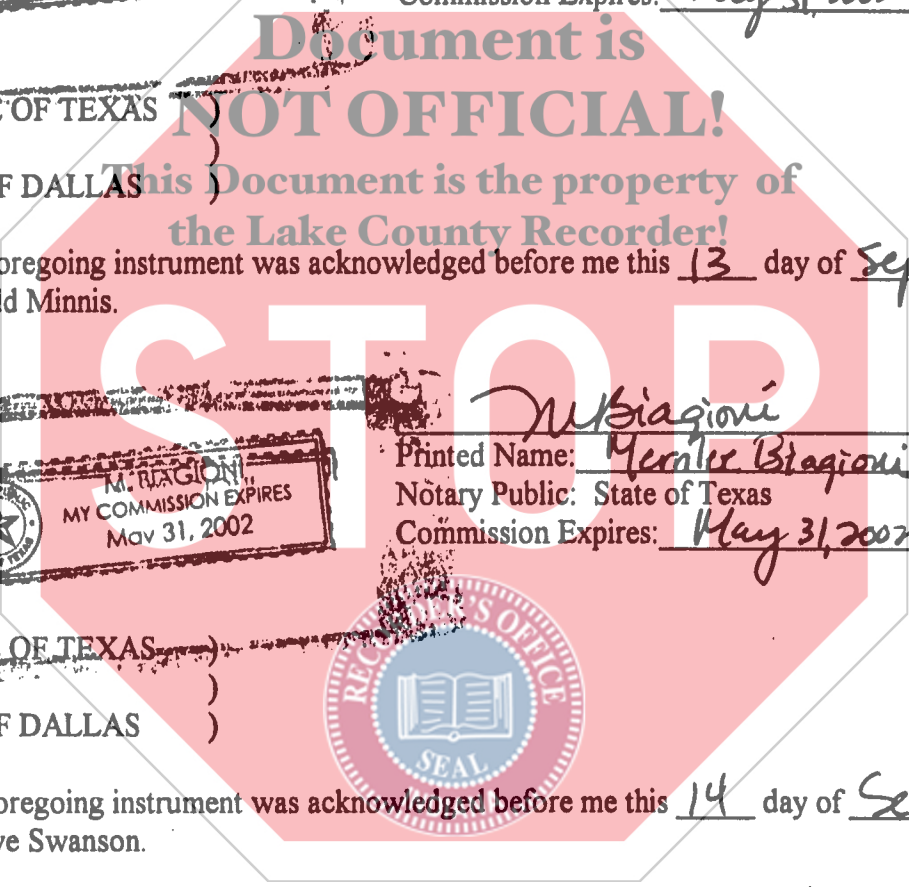
M. Biagioni
Printed Name: Merilee Biagioni
Notary Public: State of Texas
Commission Expires: May 31, 2002

THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

The foregoing instrument was acknowledged before me this 14 day of September, 2000, by Steve Swanson.



Julie Schreiber
Printed Name: Julie Schreiber
Notary Public: State of Texas
Commission Expires: 5/15/04

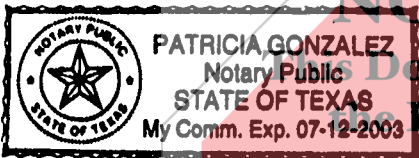


STATE OF TEXAS)
) SS:
COUNTY OF DALLAS)

Craig Davis

Before me, a Notary Public in and for said County and State, personally appeared ~~Robert R. Stone~~ *Craig Davis*, by me known and by me known to be the ~~Senior Vice President and Division Manager~~ of Guaranty Federal Bank, F.S.B., a federal savings bank, who acknowledged execution of the foregoing Modification and Extension Agreement for and on behalf of said bank and who, being first duly sworn, stated that he has been duly empowered by said bank to execute the same and that all representations contained therein made on behalf of the bank are true to the best of his knowledge and belief.

WITNESS my hand and Notarial Seal this 18 day of September 2000.



Patricia Gonzalez
Notary Public, State of Texas
Patricia Gonzalez
(Printed Signature)

My Commission Expires: 7-12-03
My County of Residence: Dallas

