

# UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY:  
Bruce A. Salk  
Cohen, Salk & Huvard, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062



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7048/0033 30 001 Page 1 of 10  
2000-11-01 10:29:26  
Cook County Recorder 39.50

AND AFTER RECORDING MAIL TO:  
Oak Brook Bank  
1400 Sixteenth Street  
Oak Brook, Illinois 60523  
Attn: John Bonino

*Property*

## MODIFICATION AGREEMENT

**THIS MODIFICATION AGREEMENT** (hereinafter referred to as the "Modification Agreement") made as of this 1st day of October, 2000, by and between OAK BROOK BANK, not personally, but solely as Trustee under Trust Agreement dated May 5, 2000 and known as Trust No. 3141 ("Trustee") and OLD IRVING POINTE, L.L.C., an Illinois limited liability company ("Co-Maker"), CLAMAR CORPORATION, an Illinois corporation, CA DEVELOPMENT INC., an Illinois corporation, J. PAUL BERTSCHE, WENDY GOLDSMITH ANDREWS, and CLARK UMENTUM (collectively, the "Guarantors") (Trustee, Co-Maker and Guarantors are hereinafter collectively referred to as the "Obligors") and OAK BROOK BANK ("Lender").

### WITNESSETH:

**WHEREAS**, Trustee and Co-Maker have executed and delivered to Lender that certain construction promissory note dated as of May 15, 2000, in the original principal sum of Two Million Five Hundred Thirty Thousand and 00/100 (\$2,530,000.00) Dollars (the "Note"), which Note is secured by the following documents (the following documents and any and all other instruments executed by any Obligor are hereinafter collectively referred to as the "Loan Documents"):

- (i) a construction mortgage, security agreement and financing statement of even date therewith, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 359357 (the "Mortgage") on property commonly known as 3845 North Milwaukee Avenue, Chicago, Illinois and legally described on Exhibit "A" attached hereto and made a part hereof (the "Premises");
- (ii) assignment of rents and of lessor's interest in leases dated of even date with the Note made by Trustee and Co-Maker in favor of Lender;
- (iii) an assignment of beneficial interest for collateral purposes and irrevocable right to approve trust documents made by Co-Maker in favor of Lender; and
- (iv) guaranty dated of even date with the Note made by Guarantors in favor of Lender;
- (v) environmental indemnity agreement dated as of even date with the Note made by Co-Maker and Guarantors in favor of Lender;

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- (vi) construction loan agreement among Trustee, Co-Maker and Lender; and
- (vii) security agreement between Trustee and others, as debtors, and Lender.

**WHEREAS**, Obligors are desirous of Trustee executing a junior mortgage in favor of Lender to secure the obligations and liabilities of Grove Park L.L.C., an Illinois limited liability company, and others to Lender (collectively, the "Grove Park Liabilities"), and to provide for payment of the Grove Park Liabilities from the proceeds of sales of units and townhomes sold by Trustee and Co-Maker, and Lender is willing to consent to such changes subject to the terms and provisions hereinafter provided.

**NOW THEREFORE**, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Mortgage held by Lender is a valid, first and subsisting lien on the Premises and that the execution of this Modification Agreement will not impair the lien of said Mortgage and that there is no existing second mortgage or other liens subsequent to the lien of the Mortgage held by Lender that will not be paid in full and released concurrently herewith (for breach of which conditions or either of them, this Modification Agreement, at the sole election of Lender, shall not take effect and shall be void), **IT IS AGREED AS FOLLOWS:**

1. The parties represent and agree that the foregoing recitals are true and correct. All defined terms used herein and not otherwise defined shall have the meaning ascribed to such term as set forth in the Loan Documents.

2. At all time prior to payment in full of the Grove Park Liabilities, all proceeds of any sales of condominium units and/or townhomes by Trustee and/or Co-Maker, after payment in full of all amounts due to Lender under the Note, shall be remitted and paid to Lender and applied to a reduction of any and all amounts due from time to time under the Grove Park Liabilities.

3. Concurrent with the execution of this Modification Agreement, Trustee agrees to execute and deliver to Lender a junior mortgage in favor of Lender securing the Grove Park Liabilities and encumbering the Premises.

4. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Note, as hereby modified and amended.

5. Except for the modifications stated herein, the Note and Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the Note and other Loan Documents and each other instrument or agreement delivered by any Obligor to or for the benefit of Lender in connection with the loan shall remain in full force and effect in accordance with their respective terms and the execution and delivery of this Modification Agreement shall not operate to waive any rights or remedies that Lender may have with respect to the Note and other Loan Documents, to forgive or waive any violation, default or breach under the Note or any other Loan Document, or to obligate Lender in any manner to make any further extensions of credit other than as expressly set forth herein.

6. Contemporaneously with the execution of this Modification Agreement by Lender, Obligors shall pay to Lender, Lender'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 Lender, such Additional Fees shall be paid by Obligors within five days after written demand therefor by Lender, and if not timely paid, they shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate (as defined in the Note).

7. The Premises described in the Mortgage shall remain in all events subject to the lien, charge or encumbrance of the Mortgage, or conveyance of title (if any) effected thereby, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to effect the lien, charge or encumbrance of, or warranty of title in, or conveyance effected by the Mortgage, or the priority thereof over liens, charges, encumbrances or conveyances, or, except as expressly provided herein, to release or affect the liability of any party or parties whomsoever may now or hereafter be liable under or on account of the Note and/or Mortgage, nor shall anything herein contained or done in pursuance thereof affect or be construed to affect any other security or instrument, if any, held by Lender as security for or evidence of the aforesaid indebtedness.

8. This Modification Agreement shall extend to and be binding upon each of the Obligors and their heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

9. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Note and other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that he or it have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Note and other Loan Documents, as so amended.

10. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois, including all matters of construction, validity and performance.

11. This Modification Agreement constitutes the entire agreement between the parties with respect to the aforesaid Modification and shall not be amended or modified in any way except by a document in writing executed by all of the parties thereto.

12. This Modification Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

13. This Modification Agreement is executed by Oak Brook Bank, not personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in said Trustee, and it is expressly understood and agreed that nothing in this Modification Agreement shall be construed as creating any personal liability on said Trustee.

14. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION 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 LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON

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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, EACH OBLIGOR AND LENDER 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 OBLIGORS AND LENDER WITH RESPECT TO THIS MODIFICATION 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, EACH OBLIGOR AND LENDER 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 OBLIGOR OR LENDER MAY FILE A COPY OF THIS EXECUTED MODIFICATION AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OBLIGOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

OAK BROOK BANK, not personally, but solely as  
Trustee as aforesaid

By:   
\_\_\_\_\_

Its: VP + TO  
\_\_\_\_\_

Attest:

By:   
\_\_\_\_\_

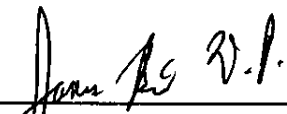
Its: VP + TO  
\_\_\_\_\_

OAK BROOK BANK

By:   
\_\_\_\_\_

Its: VP  
\_\_\_\_\_

Attest:

By:   
\_\_\_\_\_

Its: VP  
\_\_\_\_\_

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C A DEVELOPMENT, INC., an Illinois corporation,

By: Wendy Andrews  
Its: President

ATTEST:

By: *Paul Bertsch*  
Its: Secy

CLAMAR CORPORATION, an Illinois corporation

By: *Clark Umentum*  
Its: President

ATTEST:

By: *Clark Umentum*  
Its: Secy

*Paul Bertsch*  
J. PAUL BERTSCHE

*Wendy Goldsmith Andrews*  
WENDY GOLDSMITH ANDREWS

*Clark Umentum*  
CLARK UMENTUM

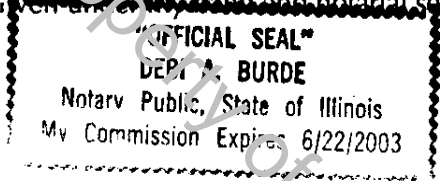
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

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I, Debi Burde, a Notary Public in and for the said County, in the State aforesaid, DO CERTIFY A. Podak, AVP and S. Nugent, VP of OAK BROOK BANK and of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers 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, as Trustee, for the uses and purposes therein set forth; and the said \_\_\_\_\_ Secretary then and there acknowledged that as custodian of the corporate seal of said Bank (s)he affixed the seal as his/her own free and voluntary act and as the free and voluntary act of said Bank, as Trustee, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27<sup>th</sup> day of OCTOBER, 2000.



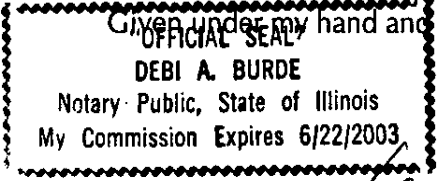
Debi A. Burde  
Notary Public

My Commission Expires: 6/22/03

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Debi Burde, a Notary Public in and for said County in the State aforesaid, do hereby certify that Motly Veluch of OAK BROOK BANK, and Jim Rago of said bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VP and VP, 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 banking association, for the uses and purposes therein set forth; and the said \_\_\_\_\_ did also then and there acknowledge that (s)he, as custodian for the corporate seal of said banking association did affix the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said banking association, for the uses and purposes set forth.

Given under my hand and notarial seal this 27<sup>th</sup> day of OCTOBER, 2000.



Debi A. Burde  
Notary Public

My Commission Expires: 6/22/03

# UNOFFICIAL COPY

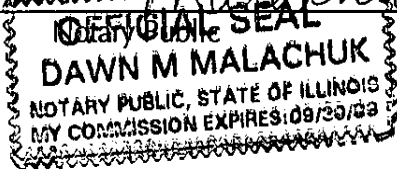
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

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I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Wendy Andrews and Paul Bertsche, the President and Secretary, respectively, of CA DEVELOPMENT INC., an Illinois corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person and acknowledged that they signed, sealed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1 day of October, 2000.

My Commission Expires: 9/30/03



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Clark Umentum and \_\_\_\_\_, the President and Secretary, respectively, of CLAMAR CORPORATION, an Illinois corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person and acknowledged that they signed, sealed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1 day of October, 2000.

My Commission Expires: 9/30/03



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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 J. PAUL BERTSCHE 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 1 day of October, 2000.

My commission expires: 9/30/03

**OFFICIAL SEAL**  
DAVID MALACHUK  
NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 09/30/03

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 WENDY GOLDSMITH ANDREWS 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 she signed and delivered the said instrument as her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal, this

My commission expires: 9/30/03

**OFFICIAL SEAL**  
DAVID MALACHUK  
NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 09/30/03

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 CLARK UMENTUM 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 1 day of October, 2000.

My commission expires: 9/30/03

*Dawn M Malachuk*  
OFFICIAL PUBLIC  
DAWN M MALACHUK  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 09/30/03

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EXHIBIT "A"

PIN: 13-22-102-013

ADDRESS: 3845 North Milwaukee Avenue, Chicago, Illinois

LOT 1 IN WIEHE'S SUBDIVISION OF THAT PART OF BLOCK 19 LYING NORTHERLY OF THE NORTHEASTERLY LINE OF MILWAUKEE AVENUE IN GRAYLAND IN THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office