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Cook County Recorder 39.00



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ORCHARD PARK Loan Mod/3022576
06/18/01

Prepared by:
Dean E. Parker
Hinshaw & Culbertson
222 North LaSalle Street
Suite 300
Chicago, Illinois 60601

NOTE: THIS SPACE FOR RECORDER'S USE ONLY

Address: See Exhibit "A" attached hereto and
made a part hereof

Tax No.: See Exhibit "A" attached and made
a part hereof

SIXTH MODIFICATION AGREEMENT

THIS SIXTH MODIFICATION AGREEMENT (this "Sixth Modification") made as of this 18th day of June, 2001 ("Date Hereof"), and effective as of such date ("Effective Date"), among AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("Lender"), and CHICAGO DWELLINGS ASSOCIATION, an Illinois not for profit corporation ("CDA"). CDA is hereinafter sometimes referred to as "Borrower."

RECITALS;

A. Pursuant to a loan agreement dated August 29, 1996, as modified by a first modification agreement dated effective as of June 30, 1998 ("First Modification"), a second modification agreement dated effective as of June 30, 1999 ("Second Modification"), a third modification agreement dated effective as of June 30, 2000 ("Third Modification"), a fourth modification agreement dated effective December 21, 2000 ("Fourth Modification"), and a fifth modification agreement dated effective April 16, 2001 ([First Modification, Second Modification, Third Modification, Fourth Modification and Fifth Modification are collectively "Previous Modifications"]) collectively "Loan Agreement"), Lender has made the following loans:

i. Construction Loan to ORCHARD PARK LIMITED PARTNERSHIP, an Illinois limited partnership ("OPLP") in the principal amount of FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00), as amended ("Construction Loan"), which was guaranteed by CDA and which Construction Loan has since been terminated as provided in the Fourth Modification;

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ii. Letter of Credit Loan to OPLP in the principal amount of FIVE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$550,000.00) which was guaranteed by CDA and which Letter of Credit Loan has since been terminated as provided in the Fourth Modification; and

iii. Line of Credit Loan to CDA in the amount, as amended, of EIGHT HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$875,000.00) ("Line of Credit Loan");

for aggregate loans, as amended, in the maximum principal amount of EIGHT HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$875,000.00) ("Principal Balance").

B. Line of Credit Loan to CDA is evidenced by a note dated August 29, 1996, as amended by Previous Modifications (collectively "Note"), and a mortgage dated August 29, 1996, as amended by Previous Modifications ("Mortgage"), and "Other Loan Documents" (as such term is defined in Mortgage), as modified by Previous Modifications.

Loan Agreement, Note, Mortgage and Other Loan Documents are hereinafter sometimes collectively referred to as "Loan Papers." Principal Balance and all other sums due Lender pursuant to Loan Papers are hereinafter sometimes referred to as "Indebtedness."

C. Mortgage conveys the land and the 306 unit apartment building and the 227 parking spaces located thereon, known as 1926 West Harrison, Chicago, Illinois, as legally described on Exhibit "A-1" attached hereto and made a part hereof ("Apartment Building"), as security for Loan, recorded in the office of the Recorder of Deeds of Cook County, Illinois ("Recorder's Office") as Document Number 96683219, as modified by First Modification recorded in Recorder's Office as Document Number 98795590, Second Modification recorded in Recorder's Office as Document Number 09034842, Third Modification recorded in Recorder's Office as Document Number 00870357, Fourth Modification recorded in Recorder's Office as Document Number 0010037247, and Fifth Modification recorded in Recorder's Office as Document Number 10387586. Mortgage is a second mortgage subject only to a prior mortgage in favor of the State Teacher's Retirement Board of Ohio (subsequently assigned to DLJ Mortgage Capital, Inc.) which secures a note which had a current outstanding principal balance as of July 31, 1998 of \$611,750.95, which amount is not susceptible to being increased by the terms of such first mortgage.

D. The current maturity date of Line of Credit Loan is December 31, 2001, and Borrower has requested that Loan Papers be modified to add a supplemental revolving loan of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), on an interest only basis which shall mature June 30, 2002 (not coterminous with Line of Credit Loan), and provide that such amount shall be available for working capital, and Lender has agreed to modify the same upon the terms and conditions hereafter set forth.

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NOW, THEREFORE, in consideration of the payments made and to be made by Borrower, as hereinafter provided, and the performance of the terms, covenants, conditions and agreements hereafter set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, IT IS HEREBY AGREED AS FOLLOWS:

1. WARRANTIES AND REPRESENTATIONS: Borrower represents and warrants as follows (collectively "Warranties and Representations"):

- a. the execution and delivery of Loan Papers were duly authorized;
- b. Loan Papers and each of the covenants, conditions and agreements contained therein are in full force and effect, are the valid and legally binding obligations of Borrower and are free from all legal and equitable defenses, offsets and counterclaims;
- c. no person, firm or corporation has or claims any interest in Apartment Building which does not appear in loan policy number 1401 007613119 D2 dated September 6, 1996, as amended by date down endorsement extending the effective date of such policy to May 9, 2001 ("Loan Policy"), nor is there any unrecorded deed, deed of trust, mortgage or other conveyance or any undelivered bill of sale, assignment or instrument of transfer relating thereto;
- d. no part of Apartment Building is in receivership nor is any application for receivership pending and no petition in bankruptcy has been filed by or against Borrower;
- e. the only parties entitled to possession of Apartment Building, or any part thereof, are Borrower and residential lessees of CDA for units in Apartment Building, pursuant to leases of less than two (2) years duration (including any options to extend) which are at market rents;
- f. real estate taxes assessed against Land and Improvements and Apartment Building has been paid in full through the 1st installment for the year 2000; and
- g. there are no agreements, state of facts or circumstances presently existing which, with or without the service of notice, passage of time, or both, would grant to Borrower the right to refuse to make or delay the payments or otherwise perform the terms, covenants, conditions and agreements required pursuant to Loan Papers.

2. ACKNOWLEDGMENT OF AMOUNTS DUE AS OF JUNE 12, 2001. As of June 12, 2001, the amount of Principal Balance outstanding and owed Lender and outstanding extensions of credit were as follows:

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- (i) Line of Credit Loan (direct obligations owed by CDA): \$750,000.00
(extensions of credit for CDA): \$122,285.00

Total Outstanding in direct obligations
and extensions of credit: \$872,285.00

Borrower acknowledges that they intend that the security interests granted pursuant to Loan Papers remain fully in tact and continuous notwithstanding that from time to time there may be no obligations of Borrower outstanding.

3. ADDITION OF SUPPLEMENTAL REVOLVING LOAN: From and after the date hereof, Loan Papers are hereby modified to add a supplemental revolving loan ("Supplemental Revolving Loan") as follows:

- (i) the following provision is hereby added to Section 3.01 C. of the Loan Agreement:

"2) the Supplemental Revolving Loan shall be made to CDA and shall be used solely for the purpose of working capital. The interest rate on the Supplemental Revolving Loan shall be one percent (1%) per annum above Lender's Base Rate announced from time to time. This portion of the Loan shall not exceed FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00);"

- (ii) the amount "ONE MILLION THREE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$1,375,000.00)" is hereby substituted for "EIGHT HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$875,000.00)," respectively, in each place where it appears in Loan Papers, whether in words or numerals, or both, including without limitation, as the aggregate amount of Line of Credit Loan and the Supplemental Revolving Loan as both are secured by Mortgage

- (iii) in addition to the mortgage and grants of security interest in Loan Papers, but not in derogation thereof, Borrower hereby mortgages to Bank and grants a security interest in Apartment Building mortgaged or pledged by Loan Papers ("Collateral") to secure the payment of indebtedness advanced, extensions of credit and interest and other sums accrued pursuant to Line of Credit Loan and DOES HEREBY GRANT, BARGAIN, SELL AND CONVEY to Lender, its successors and assigns, forever, Collateral to secure the payment

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of indebtedness advanced, extensions of credit and interest and other sums accrued pursuant to Supplemental Revolving Loan, and to secure the full and timely performance of each and every term, covenant, condition and agreement required to be performed by Borrower pursuant to Line of Credit Loan, Supplemental Revolving Loan and the Loan Documents, including this Sixth Modification;

- (iv) Borrower shall execute a note evidencing the additional amount of indebtedness due under the Supplemental Revolving Loan in the amount of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), payable to the order of Lender ("Supplemental Revolving Note"), and secured by the Loan Papers in addition to this Sixth Modification. The outstanding balance due on the Supplemental Revolving Note shall be due and payable on June 30, 2002, and any extensions of credit shall also expire on such date ("Supplemental Revolving Loan Maturity Date"). (The current maturity date of Line of Credit Loan is and remains December 31, 2001.)
- (v) Borrower shall execute an application for issuance of any letter of credit and shall furnish such additional documentation as Lender may require from time to time in connection with the issuance of letter(s) of credit and shall be bound by the terms thereof.
- (vi) any draw upon any letter of credit shall be deemed a Monetary Default pursuant to Loan Papers.

4. NO ADDITION LOAN FEE: Borrower shall not be required to pay a fee to Lender for the addition of Supplemental Revolving Loan.

5. CROSS DEFAULT: Without limitation of any of the other terms, provisions and conditions of Loan Papers, the continuing failure of Borrower to perform any obligation owed to Lender pursuant to any document, instrument or other agreement previously, now or hereafter furnished to Lender, (after the expiration of the application notice and cure period, if any) shall constitute a Monetary Default under Loan Agreement and Mortgage and, among other things, shall entitle Lender to accelerate all obligations owed by CDA to Lender.

6. ADDITIONAL PROVISIONS: Concurrently with the execution hereof:

- A. Borrower shall deliver to Lender satisfactory endorsements to Loan Policies insuring the continued validity and priority of the lien of Mortgage following the recording of this Sixth Modification (subject only to the matters set forth on Schedule B of Loan Policies), confirming all endorsements thereto;
- B. Borrower waives, to the extent permitted by law, any and all rights which it, now or may hereafter, has with respect to application for or the seeking of

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relief specified in any Federal, State or Municipal bankruptcy law, statute or ordinance ("Debtor Relief") and, to the extent that Borrower cannot waive such rights, Borrower, hereby indemnify and hold Lender harmless of, from and against any and all claims, losses or damages (including attorneys' fees) which Lender may incur by reason of the filing of a petition, for or on behalf of Borrower, seeking Debtor Relief; and

- C. Borrower shall pay all title and recording charges and other costs and expenses (including attorneys' fees) incurred by Lender by reason of the matters specified herein and the preparation of this Sixth Modification and all other documents necessary and required to effectuate the provisions hereof.

7. FAILURE OR DELAY: No failure by Lender to exercise, or delay by Lender in exercising, any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies provided in this Sixth Modification, and other Loan Papers are cumulative and not exclusive of each other or of any right or remedy provided by law or in equity. No notice to or demand upon Borrower, in any instance, shall, in itself, entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of Lender to any other or further action in any circumstance without notice or demand.

8. EFFECTIVENESS: This Sixth Modification shall become effective on Effective Date, concurrently with the execution and delivery hereof by Lender, Borrower and payment to Lender of any fees or concurrent payments required by the terms hereof.

9. CONSTRUCTION: This Sixth Modification shall not be construed more strictly against Lender than against Borrower merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that both Borrower and Lender have had opportunity to contribute substantially and materially to the preparation of this Sixth Modification, and that Borrower and Lender each acknowledges and waives any claims contesting the existence and the adequacy of the consideration given by the others in entering into this Sixth Modification.

This Sixth Modification shall be construed in conjunction with other Loan Papers. All terms used herein shall have the meanings ascribed in Loan Agreement or other Loan Papers unless otherwise defined herein.

10. ENTIRE AGREEMENT: Borrower and Lender each acknowledge that there are no other agreements or representations, either oral or written, express or implied, not embodied in this Sixth Modification, or other Loan Papers, which, together, represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lender and, except to the extent modified herein, the provisions of other Loan Papers are hereby ratified and confirmed.

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Nothing contained herein or in other Loan Papers to the contrary notwithstanding shall be deemed to release, affect or impair Indebtedness or the rights of Lender to enforce its remedies pursuant hereto and to other Loan Papers, including, without limitation, the right to pursue any remedy for injunctive or other equitable relief.

IN WITNESS WHEREOF, Lender and Borrower have caused this Loan Modification Agreement to be signed by their respective duly authorized officers and/or representations on the day and year first above written.

CHICAGO DWELLINGS ASSOCIATION, an Illinois not for profit corporation

By: Christine M.J. Oliver
Name: CHRISTINE M.J. OLIVER
Title: PRESIDENT

LENDER:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association

By: Kathleen A. Wagner
Name: Kathleen A. Wagner
Title: Commercial Banking Officer

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STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

The undersigned, a Notary Public in and for said-County, in the State aforesaid, does hereby certify that Robert A. Wagner, Officer of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("Lender") who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such OFFICER appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of Lender for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15 day of August, 2001.



Annette Rodriguez
Notary Public

My Commission Expires:

04/07/04

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STATE OF ILLINOIS)
) SS.
COUNTY OF)

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that Christine M S Oliver, President of CHICAGO DWELLINGS ASSOCIATION, an Illinois not for profit corporation ("CDA") 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/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of CDA for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15 day of August, 2001.



Annette Rodriguez
Notary Public

My Commission Expires:

04/07/04

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EXHIBIT "A-1"

Legal Description of Apartment Building

A TRACT OF LAND LOCATED IN THE CITY OF CHICAGO COUNTY OF COOK AND STATE OF ILLINOIS, AND LYING IN THE WEST ½ OF THE NORTH EAST ¼ OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN AND BOUND BY A LINE DESCRIBED BY FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF WEST CONGRESS PARKWAY WITH THE WEST LINE OF SOUTH LINE OF SOUTH WOLCOTT AVENUE THENCE SOUTH ALONG THE WEST LINE OF SOUTH WOLCOTT AVENUE TO ITS INTERSECTION WITH THE NORTH WEST LINE OF WEST OGDEN AVENUE; THENCE SOUTHWESTERLY ALONG THE NORTH WEST LINE OF WEST OGDEN AVENUE TO ITS INTERSECTION WITH THE NORTH LINE OF WEST HARRISON STREET; THENCE WEST ALONG THE NORTH LINE OF WEST HARRISON STREET TO ITS INTERSECTION WITH THE EAST LINE OF SOUTH DAMEN AVENUE; THENCE NORTH ALONG THE EAST LINE OF SOUTH DAMEN AVENUE TO ITS INTERSECTION WITH THE SOUTH LINE OF WEST CONGRESS PARKWAY; THENCE EAST ALONG THE SOUTH LINE OF WEST CONGRESS PARKWAY TO THE PLACE OF BEGINNING.

Property Tax I.D. No.: 17-18-244-042-0000

Commonly Known Address: 1926 W. Harrison, Chicago, Illinois

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