

UNOFFICIAL COPY

0011065563

09/27/02 38 081 Page 1 of 12
2001-11-13 14:44:17
Cook County Recorder 43.50

This instrument prepared by
and please return to:
Jennifer L. Worstell, Esq.
100 West Monroe Street #1500
Chicago, Illinois 60603



0011065563

P.I.N. 16-07-322-031-0000
COMMONLY KNOWN AS: 417-425 S. Wisconsin, Oak Park, Illinois

LOAN MODIFICATION AGREEMENT

This instrument is a Loan Modification Agreement ("Modification") among Delaware Place Bank, an Illinois banking corporation ("Lender"), 417-425 South Wisconsin Avenue, LLC, an Illinois limited liability company ("Borrower"), and Gregory A. Paulus and Angela A. DiMaso (collectively "Guarantors").

RECITALS:

A. Borrower holds fee simple title to certain real estate commonly known as 417-425 South Wisconsin Avenue, Oak Park, Illinois ("Real Estate"), which is legally described on Exhibit A attached hereto.

B. On June 29, 2001, Borrower executed and delivered to Lender a Promissory Note in the amount of \$1,573,125 ("Original Note") which evidences a loan in the amount of \$1,573,125 ("Original Loan"). The proceeds of the Original Loan were used to purchase the Real Estate and

rehabilitate the improvements thereon. To secure the Original Note, Borrower and Guarantors executed and delivered to Lender the following documents (collectively "Security Documents"):

1. a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC-2 Financing Statement ("Mortgage") covering the Real Estate, which Mortgage was recorded with the Cook County Recorder of Deeds on July 5, 2001 as Document No. 0010589991.

2. an Environmental ADA and ERISA Indemnification Agreement executed by Borrower and Guarantors;

3. Guaranties of Note, Mortgage, Loan Agreement and Other Undertakings executed by Guarantors ("Original Guaranties"); and

4. a UCC-1 Financing Statement executed by Borrower.

C. Borrower has now requested Lender to increase the amount of the Loan by \$636,875 from \$1,573,125 to \$2,210,000 ("Additional Loan"), the proceeds of which will be used to further improve the Real Estate. Lender is agreeable to this request subject to the covenants, conditions and restrictions contained herein.

NOW, THEREFORE, in consideration of good and valuable consideration, the parties agree as follows:

1. The Original Note is hereby restated and replaced in its entirety by a Promissory Note in the amount of \$2,210,000 ("Revised Note"), a copy of which is attached hereto as Exhibit B. The Security Documents are hereby modified and amended to secure the Revised Note and all references to the Original Note in the Security Documents are modified and amended to refer to the Revised Note in place of the Original Note.

2. This Modification shall be effective upon Lender's receipt of this Modification executed by the parties hereto and the following documents and items:

- (a) the Revised Note executed by Borrower;
- (b) a Construction Loan Agreement executed by Lender, Borrower and Guarantors ("Loan Agreement");
- (c) Amended and Restated Guaranties of Note, Mortgage, Modification and Other Undertakings executed by Guarantors;
- (d) an endorsement to Lender's loan title insurance policy which insures the Mortgage as modified by this Modification as a first lien on the Real Estate, is subject only to such exceptions as Lender shall permit, increases the amount of insurance from \$1,573,125 to \$2,210,000, reflects and insures that Borrower is the holder and owner of fee simple interest in the Real Estate, and includes a pending disbursements endorsement for construction disbursements. In the event that such an endorsement cannot be issued by the title insurer, Lender reserves the right to require a new policy of title insurance subject to the requirements set forth herein;
- (e) updated evidence of insurance as set forth in Section 4 of the Mortgage;
- (f) evidence of workers' compensation insurance as set forth in the Loan Agreement;
- (g) a Certificate of Good Standing of Borrower;
- (h) a revised Borrowing Resolution of Borrower;
- (i) an amendment to the Operating Agreement of Borrower, setting forth both Guarantors, individually, as the managing members of Borrower;

(j) payment of Lender's fee in the amount of \$6,369 plus expenses as described in Section 7 hereof;

(k) a Title Insurer's Receipts and Disbursements Statement;

(l) four (4) copies of a Construction Loan Escrow Trust and Disbursing Agreement;

(m) two (2) sets of plans and specifications for the Project to be constructed on the Real Estate (as defined in the Loan Agreement);

(n) a Sworn Owner's Statement;

(o) a Sworn Contractor's Statement;

(p) a copy of Contract with General Contractor;

(q) a copy of Contract with Borrower's Architect;

(r) copies of all contracts with subcontractors, as requested by Lender;

(s) building permits;

(t) a construction schedule; and

(u) a construction budget.

3. Lender shall return the Original Note and Original Guaranties to Borrower and Guarantors, as the case may be, no later than two (2) business days after this Agreement has been recorded with the Cook County Recorder of Deeds.

4. This Modification shall constitute an amendment of the Security Documents and wherever in said instruments or in any other instrument evidencing or securing the indebtedness evidenced by the Original Note or Revised Note ("Loan Documents") reference is made to the Loan Documents aforesaid, such reference shall be deemed a reference to such Loan Documents as hereby

modified and amended. All other provisions of the Loan Documents remain unchanged. Nothing herein contained shall in any manner affect the lien or priority of the Mortgage, or the covenants, conditions and agreements therein contained or contained in the Original Note or the Revised Note.

5. In the event of conflict between any of the provisions of the Loan Documents and this instrument, the provisions of this instrument shall override and control.

6. Borrower and Guarantors hereby renew, remake and affirm the representations and warranties contained in the Loan Documents.

7. Borrower and Guarantors hereby agree to pay Lender's fee plus all expenses arising out of and in connection with this Modification including, but not limited to, attorneys' fees, title insurance premiums and recording fees.

8. Borrower and Guarantors knowingly, voluntarily and intentionally waive irrevocably the right they may have to trial by jury with respect to any legal proceeding based hereon, or arising out of, under or in connection with this Modification, the Original Note, the Revised Note, the Loan Agreement, the Indebtedness Hereby Secured (as defined in the Mortgage) or the Real Estate, or any agreement executed or contemplated to be executed in conjunction here with or any course of conduct or course of dealing in which Lender, Borrower and Guarantors are adverse parties. This provision is a material inducement for Lender in granting any financial accommodation to Borrower or Guarantors, or any of them.

9. Borrower and Guarantors hereby irrevocably submit to the jurisdiction of any state or federal court sitting in Chicago, Illinois over any action or proceeding based hereon and Borrower and Guarantors hereby irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in such state or federal court. Borrower and Guarantors hereby irrevocably

waive, to the fullest extent they may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. Borrower and Guarantors irrevocably consent to the service of any and all process in any such action or proceeding by the mailing of copies of such process to Borrower and Guarantors at their addresses as specified in the records of Lender. Borrower and Guarantors hereby agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

Borrower and Guarantors agree not to institute any legal action or proceeding against Lender or the directors, officers, employees, agents or property thereof, in any court other than the one herein above specified. Nothing in this Section shall affect the right of Lender to serve legal process in any other manner permitted by law or affect the right of Lender to bring any action or proceeding against Borrower or Guarantors or their property in the courts of any other jurisdictions.

IN WITNESS WHEREOF, the parties hereto have executed this Modification on

October 31, 2001.

LENDER:

Delaware Place Bank, an Illinois banking corporation

By: [Signature]
Its EXECUTIVE VICE PRESIDENT

BORROWER:

417-425 South Wisconsin Avenue, LLC, an Illinois limited liability company

By: [Signature]
Gregory A. Paulus, its Managing Member

By: [Signature]
Angela A. DiMaso, its Managing Member
President, DiMaso Enterprises, Inc.

GUARANTORS:

[Signature]
Gregory A. Paulus

[Signature]
Angela A. DiMaso

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Daniel C. Siadak, EXER. V. P. of Delaware Place Bank, 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 and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal Oct. 31, 2001.

[Signature]
Notary Public



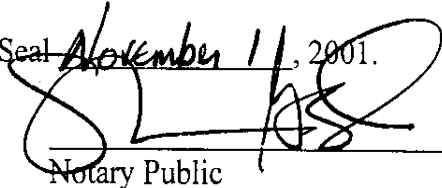
UNOFFICIAL COPY

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

11065563

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Gregory A. Paulus, individually and as a Managing Member of 417-425 South Wisconsin Avenue, LLC, an Illinois limited liability company, 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, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal November 11, 2001.



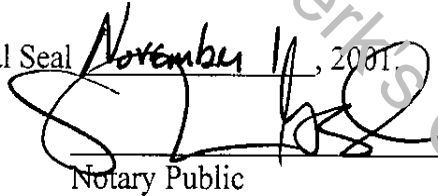
Notary Public

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



The undersigned, a Notary Public in and for the State and County. aforesaid, does hereby certify that Angela DiMaso, individually and as a Managing Member of 417-425 South Wisconsin Avenue, LLC, an Illinois limited liability company, 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, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal November 11, 2001.



Notary Public

F:\DOCS\BANKS\DELAWARE\417-425 South Wisconsin LLC\Loan Mod and Constr\MODIFICA.rev2.wpd



UNOFFICIAL COPY

11065563

EXHIBIT A

LEGAL DESCRIPTION

THE SOUTH 15 FEET OF THE NORTH ½ OF LOT 49 IN SCOVILLE AND NILES SUBDIVISION OF BLOCK 5 IN SCOVILLE AND NILES ADDITION TO OAK PARK, SAID ADDITION BEING A SUBDIVISION OF THE WEST 40 ACRES OF THE SOUTHWEST ¼ OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALSO ALL OF THE SOUTH ½ OF SAID LOT 49 AND ALL OF LOT 54 AND THE NORTH 12 FEET OF LOT 55 IN SAID SCOVILLE AND NILES SUBDIVISION IN COOK COUNTY, ILLINOIS

P.I.N.: 16-07-322-031-0000

COMMONLY KNOWN AS: 417-425 S. Wisconsin Avenue, Oak Park, Illinois

PROMISSORY NOTE

("Revised Note")

\$2,210,000

_____, 2001

FOR VALUE RECEIVED the undersigned, 417-425 South Wisconsin Avenue, LLC, an Illinois limited liability company ("Borrower"), promises to pay to the order of Delaware Place Bank, an Illinois banking corporation (said Bank and each successive owner and holder of this Note being hereinafter called "Holder"), the principal sum of Two Million Two Hundred Ten Thousand (\$2,210,000) Dollars, or so much thereof as may from time to time be outstanding hereunder, together with interest on the balance of principal from time to time remaining unpaid, in the amounts, at the rates and on the dates hereafter set forth.

The rate of interest payable on this Note will change from time to time as hereafter provided. Monthly payments on account of this Note shall be adjusted from time to time as the rate of interest changes. Payments on account of this Note shall be made as follows:

(a) On November 1, 2001, and the first day of each succeeding month thereafter until all amounts due hereunder are paid, there shall be paid on account of this Note interest for the preceding month at a variable rate equal to the prime rate of interest announced and in effect from time to time at Delaware Place Bank, plus one (1.0%) percent. The rate of interest shall change each time the prime rate is changed.

(b) On March 1, 2003, the principal balance together with all accrued interest and all other amounts due hereunder shall be paid.

Interest shall be calculated on the outstanding balance on the basis of a year having three hundred sixty (360) days and shall be paid for the actual days outstanding.

The prime rate of Delaware Place Bank is currently the highest prime rate of interest published in The Wall Street Journal. If this index is no longer available, Bank will chose a new index in compliance with applicable law and will notify Borrower of its choice. Borrower acknowledges that it is advised that said rate is not Bank's lowest or most favorable lending rate.

The balance due on account of this Note may be prepaid, without premium or penalty, in whole or in part and all accrued interest hereon shall be payable and shall be paid on the date of prepayment.

Payment upon this Note shall be made in lawful money of the United States at such place as the Holder of this Note may from time to time in writing appoint and in the absence of such appointment, shall be made at the offices of Delaware Place Bank, 190 East Delaware, Chicago, Illinois 60611.

UNOFFICIAL COPY

11065563

This Note is executed pursuant to a Loan Modification Agreement ("Modification") and a Construction Loan Agreement ("Loan Agreement") executed concurrently herewith. This Note replaces that certain Promissory Note in the amount of \$2,210,000 ("Original Note") made by Borrower on June 29, 2001. The original Note is secured by a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC-2 Financing Statement ("Mortgage") executed on June 29, 2001 and recorded on July 5, 2001 with the Cook County Recorder of Deeds as Document No. 0010589991. Amounts outstanding pursuant to the Original Note shall be outstanding under this Note. All interest rates applicable to and charged on the Original Note and all payments made on the Original Note are unchanged. Pursuant to the Modification, the Mortgage and other security documents ("Security Documents") are modified to secure this Note.

Without limiting the provisions of the succeeding paragraphs, in the event any payment of interest or principal is not paid within ten (10) days after the date the same is due, the undersigned promises to pay a late charge ("Late Charge") of five (5.0%) percent of the amount so overdue to defray the expense incident to handling any such delinquent payment or payments.

At the election of the Holder hereof, without notice, the principal sum remaining unpaid hereon, together with accrued interest, shall be and become at once due and payable in the case of default for five (5) days in the payment of principal or interest or fifteen (15) days in the case of any other monies when due in accordance with the terms hereof or upon the occurrence of any "Event of Default" under the Mortgage, the Modification and the Loan Agreement.

Under the provisions of the Mortgage and the Loan Agreement the unpaid balance hereunder may, at the option of the Holder, be accelerated and become due and payable forthwith upon the happening of certain events as set forth therein. The Mortgage and the Loan Agreement are, by this reference, incorporated herein in their entirety and notice is given of such possibility of acceleration.

The principal hereof, including each installment of principal, shall bear interest after the occurrence of an Event of Default, not cured within the applicable cure period, at the annual rate (herein called the "Default Rate") determined by adding four (4.0%) percentage points to the interest rate then required to be paid, as above provided, on the principal balance.

Borrower waives notice of default, presentment, notice of dishonor, protest and notice of protest.

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceeding, the undersigned promises to pay all costs incurred by Bank in connection therewith including, but not limited to, court costs, litigation expenses and reasonable attorneys' fees.

Payments received on account of this Note shall be applied first to the payment of any amounts due pursuant to the next preceding paragraph, second to interest and Late Charges and the balance to principal.

UNOFFICIAL COPY

11065563

Funds representing the proceeds of the indebtedness evidenced herein which are disbursed by Holder by mail, wire transfer or other delivery to Borrower, escrowees or otherwise for the benefit of Borrower shall, for all purposes, be deemed outstanding hereunder and received by Borrower as of the date of such mailing, wire transfer or other delivery, and interest shall accrue and be payable upon such funds from and after the date of such mailing, wire transfer or other delivery until repaid to Holder, notwithstanding the fact that such funds may not at any time have been remitted by such escrowees to Borrower.

COPY

Borrower knowingly, voluntarily and intentionally waives irrevocably the right it may have to trial by jury with respect to any legal proceeding based hereon, or arising out of, under or in connection with this Note, the Mortgage, the Loan Agreement, the Modification or any of the other obligations, or the collateral secured by the Security Documents, or any agreement, executed or contemplated to be executed in conjunction herewith or any course of conduct or course of dealing, in which Holder and Borrower are adverse parties. This provision is a material inducement for Holder in granting any financial accommodation to Borrower.

Borrower hereby irrevocably submits to the jurisdiction of any state or federal court sitting in Chicago, Illinois over any action or proceeding based hereon and Borrower hereby irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such state or federal court. Borrower hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. Borrower irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to Borrower at its address as specified in the records of Holder. Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

Borrower agrees not to institute any legal action or proceeding against Holder or the directors, officers, employees, agents or property thereof, in any court other than the one herein above specified. Nothing in this Section shall affect the right of Holder to serve legal process in any other manner permitted by law or affect the right of Holder to bring any action or proceeding against Borrower or its property in the courts of any other jurisdictions.

Time is of the essence of this Note and each provision hereof.

417-425 South Wisconsin Avenue, LLC, an Illinois limited liability company

By: _____
Gregory A. Paulus, its Managing Member

By: _____
Angela A. DiMaso, its Managing Member