

UNOFFICIAL COPY

0020632225

4215 0064 08 001 Page 1 of 12  
2002-06-06 13:32:04  
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



P.I.N.: 17-08-254-004-0000; 17-08-254-011-0000;  
17-08-254-012-0000; 17-08-254-014-0000;  
17-08-254-017-0000; 17-08-254-018-0000  
COMMONLY KNOWN AS: 400-420 N. May Street, Chicago, Illinois

**SECOND LOAN MODIFICATION AND ASSUMPTION AGREEMENT**

This instrument is a Second Loan Modification and Assumption Agreement ("Second Modification") among The PrivateBank and Trust Company, an Illinois banking corporation ("Lender") and 420 May Street, L.L.C., an Illinois limited liability company ("Borrower"), and James L. Gaza and Lynnette A. Gaza (collectively "Guarantors").

**RECITALS:**

- A. Borrower holds fee simple title to certain real estate ("Real Estate") commonly known as 400-420 N. May Street, Chicago, Illinois, which is legally described on Exhibit A attached hereto.
- B. On February 28, 1996, LaSalle Bank National Association, successor to American National Bank and Trust company of Chicago, Trustee ("Trustee") under Trust Agreement No. 10071900 dated December 9, 1986 ("Trust"), executed and delivered to Lender a Promissory Note in the amount of \$2,300,000 ("Note") which evidenced a loan in the amount of \$2,300,000 ("Loan").

Borrower is the beneficiary of the Trust. To secure the Note, Trustee, Borrower and Guarantors executed and delivered to Lender the following documents ("Security Documents"):

1. a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC-2 Financing Statement ("Mortgage") executed by Trustee and Borrower and covering the Real Estate, which Mortgage was recorded with the Cook County Recorder of Deeds on March 5, 1996 as Document No. 06165657;

2. an Environmental Indemnity Agreement executed by Trustee and Borrower;

3. UCC-1 Financing Statements (2) executed by Trustee and Borrower;

4. Guaranties of Note, Mortgage, and Other Undertakings ("Guaranties") executed by Guarantors (the "Original Guaranties");

5. a Collateral Assignment of Beneficial Interest in Land Trust executed by Borrower, consented to by Lender and accepted by Trustee; and

6. a Management Services Subordination Agreement executed by May Street Management Company, Inc., the manager of the Real Estate.

C. On March 26, 2002, Borrower and Lender entered into a Loan Modification Agreement ("Modification"), pursuant to which Lender agreed to extend the date for payment of the Loan from March 1, 2002 to May 1, 2002.

D. On May 21, 2001, Trustee executed a Trustee's Deed from Trustee to Borrower for the Real Estate. The Trustee's Deed was recorded on May 13, 2001 with the Cook County Recorder of Deeds as Document No. 20546281.

E. The outstanding principal balance of the Loan is \$2,096,300.78. Borrower has now requested Lender to: (1) extend the date for payment of the Loan to March 1, 2008, (2) adjust the

interest rate applicable to the Loan, (3) acknowledge and consent to the title transfer, and (4) reduce the amount covered by the Original Guaranties to \$500,000. Lender is agreeable to these requests 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 Note is hereby modified and amended in its entirety by a revised Promissory Note in the amount of \$2,096,300.78 ("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 Note in the Security Documents are modified and amended to refer to the Revised Note in place of the Note. All amounts presently outstanding on the Note shall be deemed outstanding on the Revised Note. All interest charged on and all payments made on the Note previously are unchanged.

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

- (a) the Revised Note executed by Borrower;
- (b) a Limited Guaranty of Revised Note, Second Modification and Other Undertakings executed by Guarantors in the amount of \$500,000 ("Revised Guaranty");
- (c) updated evidence of fire, casualty, business interruption, rent loss and commercial general liability insurance coverage;
- (d) a certified copy of the recorded Trustee's Deed;
- (e) the Operating Agreement of May Street Management Company, Inc., the manager of Borrower;

- (f) a Certificate of Good Standing of May Street Management Company, Inc.;
- (g) an Organization Resolution/Incumbency Certificate of Borrower;
- (h) a Certificate of Good Standing of Borrower; and
- (i) a Loan Settlement Statement showing Lender's fee in the amount of \$10,480

plus expenses as set forth in Section 6 hereof.

3. This Second 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 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 Note or Revised Note.

4. 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.

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

6. Borrower hereby agrees to pay all of Lender's expenses arising out of and in connection with this Second Modification including, but not limited to, title insurance premiums, recording fees and attorneys' fees performed in the preparation of necessary documentation.

7. Guarantors hereby agree that the Original Guaranties are replaced in their entirety by the Revised Guaranty, which covers and guaranties the Revised Note. Guarantors hereby expressly acknowledge and confirm that by executing this Second Modification, Lender has not

waived, altered or modified Lender's rights under any of the Loan Documents to amend, extend, renew or modify or otherwise deal with the obligations of the parties hereto or any of the security given to Lender in connection therewith without the consent of Guarantors and without such action releasing, modifying, or affecting the obligations of Guarantors or affecting the security heretofore granted to Lender.

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 the Revised Note or any of the documents executed or contemplated to be executed in conjunction herewith or any course of conduct or course of dealing, in which Lender and Borrower or 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 agree that a final judgment in any such action or proceeding shall be

# UNOFFICIAL COPY

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 and Guarantors or their property in the courts of any other jurisdictions.

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

May 29, 2002

**LENDER:**

The PrivateBank and Trust Company, an Illinois banking corporation

By: [Signature]  
Its ASSOC. Managing DIRECTOR

**BORROWER:**

420 May Street, L.L.C., an Illinois limited liability company

By: [Signature]  
May Street Management Company, Inc., an Illinois corporation, its Manager

By: [Signature]  
James L. Gaza, its President

**GUARANTORS:**

[Signature]  
James L. Gaza

[Signature]  
Lynnette A. Gaza

# UNOFFICIAL COPY

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

The undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that Jane Fero <sup>18802</sup> Managing Director of The PrivateBank and Trust 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 (s)he signed and delivered the said instrument as his/her 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 May 29, 2002

Debra A Panzica  
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 James L. Gaza, individually and a President of May Street Management Company, Inc., an Illinois corporation, the Manager of 420 May Street, L.L.C., 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 corporation and limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal May 29, 2002.

Debra A. Panzica  
Notary Public

# UNOFFICIAL COPY

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 Lynnette A. Gaza, 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 May 29, 2002.

Debra A. Panzica  
Notary Public



Property of Cook County Clerk's Office



**UNOFFICIAL COPY****PROMISSORY NOTE**  
**("Revised Note")**

\$2,096,300.78

March 1, 2002

**FOR VALUE RECEIVED** the undersigned, 420 May Street, L.L.C., an Illinois limited liability company ("Borrower"), promises to pay to the order of The PrivateBank and Trust Company, 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 Ninety-Six Thousand Three Hundred and 78/100 (\$2,096,300.78) 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 will be adjusted from time to time as the rate of interest changes. Payments on account of this Note will be made as follows:

(a) On April 1, 2002, and continuing on the first day of each succeeding month to and including March 1, 2005, there shall be paid on account of this Note the amount of \$16,772.11, which amount shall be applied first to interest at a rate of seven (7.0%) percent per annum and the balance to principal.

(b) On March 1, 2005 ("Adjustment Date"), the rate of interest to be paid by Borrower to Holder shall be adjusted ("Adjusted Rate"). The Adjusted Rate shall be determined by adding 2.75 percentage points to the weekly average yield on interest rate swaps adjusted to a constant maturity of three (3) years in effect as of the date forty-five (45) days preceding the Adjustment Date, as published in the Federal Reserve Statistical Release (H.15, Selected Interest Rates Report), rounded to the nearest .125%.

(c) On April 1, 2005 ("Adjusted Payment Date"), the monthly payment shall be adjusted to a payment in the appropriate amount required to amortize, by the level rate amortization method, the outstanding principal balance of the Note as of each Adjustment Date at such Adjusted Rate for a term of months determined by deducting from two hundred twenty-eight (228) months the number of months elapsed from April 1, 2002 to the Adjustment Date ("Adjusted Payment"). The Adjusted Payment shall be made on the Adjusted Payment Date and on the first day of each succeeding month thereafter until the Maturity Date and shall be applied first to interest at the Adjusted Rate and the remainder to principal.

(d) On March 1, 2008 ("Maturity Date"), the principal balance together with all accrued interest and all other amounts due hereunder shall be paid.

In the event prior to any Adjustment Date the United States shall discontinue the publication of the Federal Reserve Statistical Release, the adjustment provided for in subparagraph (b) above shall be made based upon such index as shall be, in the reasonable judgment of Holder, comparable to the index provided for in said subparagraph (b). In the event the index selected by the Holder is not acceptable to Borrower, the interest rate previously in effect shall continue to be in effect for an additional period of two (2) months and monthly payments shall continue in the same amount. During such period of two (2) months Borrower and Holder shall negotiate an acceptable rate of interest and a mutually acceptable method of determining a rate of interest for future adjustments. Should the parties reach an agreement the monthly payments for the preceding two (2) months shall be adjusted and monthly payments shall be calculated based upon such agreement. Should the parties not reach an agreement within such two (2) months, then the principal balance, together with all accrued interest and all other amounts due hereunder, shall be due and payable, and shall be paid on the tenth day following the expiration of such two-(2-) month period.

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

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 The Private Bank and Trust Company, 10 North Dearborn, Chicago, Illinois 60602.

Without limiting the provisions of the succeeding paragraphs, in the event any payment of interest 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.

This Note is executed pursuant to a Second Loan Modification and Assumption Agreement executed concurrently herewith ("Second Modification"). This Note replaces that certain Promissory Note in the amount of \$2,300,000 ("Original Note") made by Borrower on February 28, 1996. The Original Note is secured by a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC-2 Financing Statement ("Mortgage") executed on February 28, 1996 and recorded on March 5, 1996 with the Cook County Recorder of Deeds as Document No. 96165657. 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 Second Modification, the Mortgage and other security documents ("Security Documents") are modified to secure this Note.

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 when due in accordance with the terms hereof or upon the occurrence of any "Event of Default" under the Mortgage or Security Documents.

Under the provisions of the Mortgage and Security Documents 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 Security Documents 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 promise to pay all costs incurred by Bank in connection therewith including, but not limited to, court costs, litigation expenses and 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.

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 escrowees to Borrower.

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 Second 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.

420 May Street, L.L.C., an Illinois limited liability company

By: May Street Management Company, Inc., an Illinois corporation, its Manager

By:  James L. Gaza, its President

C:\WINDOWS\TEMP\note.ex1.wpd