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0030189676

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2003-02-07 11:38:26  
Cook County Recorder 48.50

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



0030189676



#9007

COMMONLY KNOWN AS: 825 South Oak Park Avenue, Oak Park, Illinois  
P.I.N.: 16-18-135-017, Vol. 144

**SECOND LOAN MODIFICATION AGREEMENT**

This instrument is a Second Loan Modification Agreement ("Second Modification") among The PrivateBank and Trust Company, an Illinois banking corporation ("Lender"), Fifth Third Bank, formerly known as Old Kent Bank, as successor to Pinnacle Bank, as successor to Suburban Trust and Savings Bank, as Trustee under Trust Agreement No. 4093, dated December 18, 1987, and not individually ("Trustee"), Louis B. Scannicchio and Louis Scannicchio, Sr. (collectively "Beneficiaries") and Linda A. Scannicchio. Trustee, Beneficiaries and Linda A. Scannicchio are collectively referred to herein as "Borrowers."

**RECITALS:**

A. Trustee holds fee simple title to certain real estate ("Real Estate") commonly known as 825 South Oak Park Avenue, Oak Park, Illinois, which is legally described on Exhibit A attached hereto. Beneficiaries are the beneficiaries of the Trust. Linda A. Scannicchio is affiliated with Beneficiaries.

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B. On June 30, 2000, Trustee, Louis B. Scannicchio and Linda A. Scannicchio executed and delivered to Lender a Promissory Note in the amount of \$300,000 ("Note") which evidenced a loan in the amount of \$300,000 ("Loan"). To secure the Note, Borrowers 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 Statements ("Mortgage") covering the Real Estate and executed by Trustee and Beneficiaries which Mortgage was recorded with the Cook County Recorder of Deeds on July 20, 2000 as Document No. 00543742;

2. a Collateral Assignment of Beneficial Interest in Land Trust ("Collateral Assignment") executed by Beneficiaries and accepted by Trustee;

3. an Environmental, ADA and ERISA Indemnification Agreement executed by Beneficiaries; and

4. UCC-1 Financing Statements executed by Trustee and Beneficiaries.

C. On August 31, 2001, to be effective as of August 1, 2001, Borrowers and Lender entered into a Loan Modification Agreement ("Modification"). Pursuant to the Modification, Lender agreed to revise the interest rate applicable to the Note and Borrowers executed and delivered to Lender a Promissory Note in the amount of \$292,841.83 ("Revised Note"). The Modification was recorded with the Cook County Recorder of Deeds on January 15, 2002 as Document No. 0020058261.

D. The current outstanding balance of the Loan is \$281,673.81. Borrowers have now requested Lender to revise the interest rate applicable to the Revised Note from eight and one-quarter

(8.25%) percent to seven (7.0%) percent per annum. 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 Revised Note is hereby modified and amended in its entirety by the Promissory Note in the amount of \$281,673.81 ("Revised Note II"), a copy of which is attached hereto as Exhibit B. The Security Documents are hereby modified and amended to secure Revised Note II and all references to the Note or Revised Note in the Security Documents are modified and amended to refer to Revised Note II in place of the Note and Revised Note.

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) Revised Note II executed by Borrowers;
- (b) a title insurance policy or endorsement to Lender's current loan title insurance policy which insures the Mortgage as modified by this Second Modification as a first lien on the Real Estate subject only to such exceptions as Lender shall permit and which reflects and insures that Trustee is the holder and owner of fee simple interest in the Real Estate;
- (c) updated certificates of insurance as required by the Mortgage;
- (d) a certified copy of the letter of direction to Trustee authorizing the execution of this Second Modification and Revised Note II;
- (e) a certified copy of the Trust Agreement;
- (f) an updated rent roll; and
- (g) payment of Lender's fee expenses as described in Section 6 hereof.

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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 Revised Note II ("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, Revised Note or Revised Note II.

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. Borrowers hereby renew, remake and affirm the representations and warranties contained in the Loan Documents.

6. Borrowers hereby agree to pay all of Lender's expenses arising out of and in connection with this Second Modification including, but not limited to, attorneys' fees, title insurance premiums and recording fees.

7. Borrowers 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 Revised Note II, the Revised Note, the Note, the Second Modification, the Modification, the Mortgage 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 Borrowers are adverse parties. This provision is a material inducement for Lender in granting any financial accommodation to Borrowers, or any of them.

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8. Borrowers hereby irrevocably submit to the jurisdiction of any state or federal court sitting in Chicago, Illinois over any action or proceeding based hereon and Borrowers hereby irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in such state or federal court. Borrowers 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. Borrowers 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 Borrowers at their addresses as specified in the records of Lender. Borrowers 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.

Borrowers 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 Borrowers or their property in the courts of any other jurisdictions.

9. This Second Modification is executed by Fifth Third Bank, formerly known as Old Kent Bank, as successor to Pinnacle Bank, as successor to Suburban Trust and Savings Bank, as Trustee, not individually or personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on Trustee personally to pay any indebtedness arising or accruing under or pursuant to this Second Modification, or to perform any covenant, undertaking, representation or agreement, either express

or implied, contained in this Second Modification all such personal liability of Trustee, if any, being expressly waived by each and every person now or hereafter claiming any right under this Second Modification.

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

11-6-03, 2002 to be effective as of December 1, 2002.

**TRUSTEE:**

Fifth Third Bank, formerly known as Old Kent Bank, as successor to Pinnacle Bank, as successor to Suburban Trust and Savings Bank, as Trustee under Trust Agreement dated December 18, 1987 and known as Trust No. 4093, and not individually

By: [Signature]  
Its [Signature]  
Attest [Signature]  
Its [Signature]

**LENDER:**

The PrivateBank and Trust Company, an Illinois banking corporation

By: [Signature]  
Its ASSOCIATE MANAGING DIRECTOR

[Signature]  
Linda A. Scannicchio

EXONERATION PROVISION RESTRICTING ANY LIABILITY OF FIFTH THIRD BANK, ATTACHED HERETO, IS HEREBY EXPRESSLY MADE A PART HEREOF.

**BENEFICIARIES:**

[Signature]  
Louis B. Scannicchio

[Signature]  
Louis Scannicchio, Sr.

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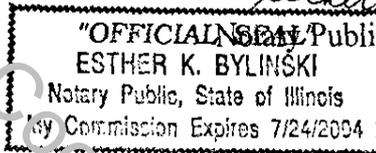
STATE OF ILLINOIS )  
 )SS  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that <sup>JEFFREY SCHMIDT</sup> Jeffrey Schmidt and <sup>ROBERTA A. CARTWRIGHT</sup> Roberta A. Cartwright, Vice President and Secretary, respectively, of Fifth Third Bank, formerly known as Old Kent Bank, successor to Pinnacle Bank, as successor to Suburban Trust and Savings Bank, as Trustee as aforesaid, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, 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 Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal January 8<sup>118</sup>, 2007<sup>3</sup>.

Esther K. Bylinski

STATE OF ILLINOIS )  
 )SS  
COUNTY OF COOK )

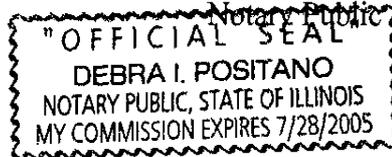


The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Louis B. Scannicchio, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered 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 1-6-03, 2002.

Debra I. Positano

STATE OF ILLINOIS )  
 )SS  
COUNTY OF COOK )



The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Louis Scannicchio, Sr., 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 1-6-03, 2002.



Debra I. Positano  
Notary Public

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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 Linda A. Scannicchio, 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 1-6-03, 2002.

Debra J. Positano  
Notary Public

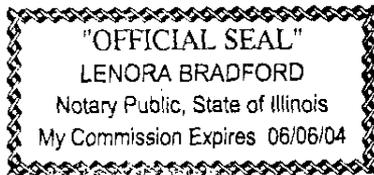
STATE OF ILLINOIS )  
 )SS  
COUNTY OF C O O K )



The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that DAVID Neilson, 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 2<sup>nd</sup> January 2003.

Lenora Bradford  
Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION:

LOT 7 IN BLOCK 4 IN OAK PARK AVENUE SUBDIVISION BEING A SUBDIVISION OF LOTS 2 AND 3 AND THAT PART OF LOT 1 LYING WEST OF OAK PARK AVENUE IN THE PARTITION BY THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS OF THE EAST ½ OF LOT 2 IN THE SUBDIVISION OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE WEST ½ OF THE SOUTHWEST ¼ OF SAID SECTION) IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS:  
P.I.N.:

825 South Oak Park Avenue, Oak Park, Illinois  
16-18-135-017

Property of Cook County Clerk's Office

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**PROMISSORY NOTE**  
**("Revised Note II")**

**0030189676**

\$281,673.81

December 1, 2002

**FOR VALUE RECEIVED** the undersigned, Fifth Third Bank, formerly known as Old Kent Bank, as successor trustee to Pinnacle Bank, as successor trustee to Suburban Trust and Savings Bank, as Trustee ("Trustee") under Trust Agreement No. 4093 dated December 18, 1987, Louis B. Scannicchio, Louis Scannicchio, Sr. and Linda A. Scannicchio (collectively "Borrowers"), jointly and severally promise 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 Hundred Eighty-One Thousand Six Hundred Seventy-Three and 81/100 (\$281,673.81) 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 January 1, 2003, and continuing on the first day of each succeeding month to and including December 1, 2007 there shall be paid on account of this Note the amount of \$2,700.00, 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 December 1, 2007 and on December 1 of each succeeding year thereafter (each date shall hereafter be referred to as "Adjustment Date") the rate of interest to be paid by Borrowers to Holder shall be adjusted ("Adjusted Rate"). The Adjusted Rate shall be determined by adding 3.50 percentage points to the weekly average yield on interest rate swaps adjusted to a constant maturity of one (1) year 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 January 1, 2008 and on January 1 of each succeeding year thereafter (each date shall hereafter be referred to as an "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 the Adjustment Date at such Adjusted Rate for a term of months determined by deducting from two hundred twenty-five (225) months the number of months elapsed from January 1, 2003 to the Adjustment Date ("Adjusted Payment"). The Adjusted Payment shall be paid on the Adjusted Payment Date and on the first day of each

thereafter until the next Adjusted Payment Date or the Maturity Date, whichever first occurs, and shall be applied first to interest at the Adjusted Rate and the remainder to principal.

(d) On June 1, 2010 ("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 Borrowers, 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 Borrowers 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-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.

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 PrivateBank 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 Agreement executed concurrently herewith ("Second Modification"). This Note replaces that certain Promissory Note in the amount of \$292,841.83 ("Revised Note") made by Borrowers and dated August 31, 2001, which replaces that certain Promissory Note in the amount of \$300,000 ("Original Note"), made by Trustee, Louis B. Scannicchio and Linda A. Scannicchio on June 30, 2000. The Original Note is secured by a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC-2 Financing Statement ("Mortgage") executed on June 30, 2000 and recorded on July 20, 2000 with the Cook County Recorder of Deeds as Document No. 00543742. The Revised Note was executed pursuant to the terms of a Loan Modification Agreement ("Modification") of even date therewith. Amounts

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outstanding pursuant to the Original Note and Revised Note shall be outstanding under this Note. All interest rates applicable to and charged on the Original Note and Revised Note and all payments made on the Original Note and Revised 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 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 and 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.

Borrowers waive 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 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.

Funds representing the proceeds of the indebtedness evidenced herein which are disbursed by Holder by mail, wire transfer or other delivery to Borrowers, escrowees or otherwise for the benefit of Borrowers shall, for all purposes, be deemed outstanding hereunder and received by Borrowers 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 Borrowers.

Borrowers 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 Note, 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 Borrowers are adverse parties. This provision is a material inducement for Holder in granting any financial accommodation to Borrowers, or any of them

This Note is executed by Fifth Third Bank, formerly known as Old Kent Bank, as successor trustee to Pinnacle Bank, as successor trustee to Suburban Trust and Savings Bank, not individually or personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on Trustee personally to pay any indebtedness arising or accruing under or pursuant to this Note, or to perform any covenant, undertaking, representation or agreement, either express or implied, contained in this Note, all such personal liability of Trustee, if any, being expressly waived by each and every person now or hereafter claiming any right under this Note

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

Fifth Third Bank, formerly known as Old Kent Bank, as successor trustee to Pinnacle Bank, as successor to Suburban Trust and Savings Bank, as Trustee under Trust No. 4093 dated December 18, 1987, and not personally

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

Attest: \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Louis B. Scannicchio

\_\_\_\_\_  
Louis Scannicchio, Sr.

\_\_\_\_\_  
Linda A. Scannicchio