

7897114/KML-D1

5510/0178 55 001 Page 1 of 12
2003-02-28 10:22:57
Cook County Recorder 46.00

FIRST MODIFICATION AGREEMENT



THIS FIRST MODIFICATION AGREEMENT (this "First Modification") is entered into as of December 30, 2002 by and among Area Wide 71" & Pulaski, Inc., an Illinois corporation, Faysal Mohamed ("Mohamed"), Ali Ata ("Ata") (Mohamed and Ata are collectively referred to herein as "Guarantor") and First Bank and Trust Company of Illinois ("Lender").

RECITALS:

A. September 5, 2001, Borrower borrowed from Lender the sum of \$3,920,000 (the "Loan").

B. The Loan was evidenced by a Mortgage Note of even date therewith made by Borrower to Lender in the principal amount of \$3,920,000 (the "Note"). The Note was evidenced and secured, among other things, by the following described documents (said security documents and any other document or instrument securing the Note are hereinafter collectively referred to as the "Loan Documents"):

1. Mortgage by Borrower in favor of Lender, dated September 5, 2001, (the "Mortgage") and recorded September 18, 2001 in the Cook County Recorder's Office as Document No. 10862639;
2. Assignment of Rents and Lessor's Interest in Leases by Borrower in favor of Lender, dated September 5, 2001 and recorded 9/18/01 in the Cook County Recorder's Office as Document No. 010862640 (the "Assignment of Rents");
3. Security Agreement by and between Borrower and Lender dated September 5, 2001, granting Lender a first security interest in the Collateral (as defined in the Security Agreement);
4. Completion Guarantee from Guarantor to Lender dated September 5, 2001, (the "Guarantee");
5. Environmental Indemnity Agreement from Borrower and Guarantor to Lender dated September 5, 2001, (the "Indemnity");
6. Other loan documents executed in connection with the Loan (the "Loan Documents").

12

BOX 333-CT

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C. The current outstanding balance under the Note is \$4,165,000.00.

D. Borrower and Guarantor wish, and Lender is willing, to modify the terms of the Loan Documents, subject to the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into and made a part of this First Modification Agreement.

2. Capitalized Terms. Capitalized terms contained in this First Modification Agreement shall retain the meaning given under the Note or the Loan Documents.

3. Loan Documents. This First Modification Agreement shall be included in the definition of Loan Documents, as defined in the Note, the Mortgage and the other Loan Documents.

4. Loan Amount. Notwithstanding anything to the contrary contained in the Loan Documents, the principal balance of the Loan shall be Four Million One Hundred Sixty-Five and 00/100 Dollars (\$4,165,000.00).

5. Maturity Date. The Maturity Date, as defined in the Loan Documents, is March 5, 2003.

6. Extension Fee. Borrower shall pay to Lender an extension fee simultaneously herewith in the amount of ~~\$41,650.00~~ (the "Extension Fee") * 20,825⁰⁰ *HA/12-31-02*

7. Consent of Guarantor. Guarantor expressly consents to the terms, provisions and conditions of this First Modification Agreement and acknowledges and ratifies all other terms of the Guarantee and Indemnity.

8. Conditions Precedent. Borrower and Guarantor acknowledge and agree that this First Modification Agreement shall be of no force or effect unless and until:

(a) this First Modification Agreement has been executed by Borrower and Guarantor and delivered to and accepted and executed by Lender and recorded with the Cook County Recorder's Office;

(b) Borrower shall have paid to Lender the Extension Fee; and

(c) Chicago Title Insurance Company shall have delivered to Lender an endorsement, dated no earlier than the recording date of this First Modification, to its Policy No.007897114, dated 3/25/02, (the "Title Policy"), which endorsement shall (i) show Lender as an insured under the Title Policy; (ii) insure the validity and first priority of each of the recorded Loan Documents as securing the Note, as the same are amended by this Fifth Modification; (iii) disclose no Schedule B-1 exceptions other than those set forth in the Title Policy or as approved in writing

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4.9
9
441

4.9
85
245
392
4165

4.9
86
294
392
4214

5.5
85
275
440
4675

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by Lender's counsel; (iv) insure that Borrower is owner in fee simple of title to the Property; and (v) modify the amount of insurance to \$4,165,000.00.

(d) Notwithstanding anything contained in the Loan Documents to the contrary, the Loan to Value Ratio (as defined in the Loan Documents) shall not be greater than eighty-five percent (85%) at any time any outstanding principal balance remains due and owing to Lender under the Loan.

(e) Notwithstanding anything contained in the Loan Documents to the contrary, the Loan to Cost Ratio (as defined in the Loan Documents) shall not be greater than eighty-four percent (84%) at any time any outstanding principal balance remains due and owing to Lender under the Loan.

9. Documents to Remain in Effect; Confirmation of Obligations. The Note and the Loan Documents shall remain in full force and effect as originally executed and delivered by the parties, except as expressly modified and amended herein. The Loan Documents shall include this First Modification Agreement, and all references in the Note and the Loan Documents to such documents shall be deemed to refer to the Note and Loan Documents as modified herein. Borrower and Guarantors hereby confirm and reaffirm all of their obligations under the Note and the Loan Documents, as modified and amended herein, and confirm and reaffirm that the Loan Documents secure the Note. To induce Lender to enter into this First Modification Agreement, Borrower and Guarantors hereby represent, acknowledge and agree that they do not now have or hold any defense to the performance of any of their respective obligations under the Note or the Loan Documents, nor do Borrower or Guarantors have any claim against Lender which might be set off or credited against any payments due under any of the Note or Loan Documents. Borrower and Guarantors further represent, acknowledge and agree that, as of the date hereof, they do not have any actual or potential actions, claims, suits or defenses arising from any letters of intent, correspondence or other communications (oral or written) between Borrower, Guarantors, and Lender.

10. Certifications, Representations and Warranties. In order to induce Lender to enter into this First Modification Agreement, Borrower and Guarantors hereby certify, represent and warrant to Lender that all certifications, representations and warranties contained in the Note and the Loan Documents and in all certificates heretofore delivered to Lender are true and correct as of the date hereof, and all such certifications, representations and warranties are hereby remade and made to speak as of the date of this First Modification Agreement.

11. Additional Certificates, Representations and Warranties. In addition to the certifications, representations and warranties set forth in the Note and the Loan Documents, Borrower and Guarantor hereby certify, represent and warrant to Lender that:

(a) Borrower and Guarantor have all necessary power to carry on their present businesses, and have full right, power and authority to enter into and execute and deliver this First Modification Agreement and to otherwise perform and consummate the transactions contemplated hereby.

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(b) This First Modification Agreement has been duly authorized, executed and delivered by Borrower and Guarantor and constitute valid and legally binding obligations enforceable against each such party in accordance with their terms. The execution and delivery of this First Modification Agreement and compliance with the provisions hereof and thereof under the circumstances contemplated herein and therein do not and will not conflict with or constitute a breach or violation of or default under the agreement creating Borrower or any agreement or other instrument to which Borrower, Guarantor, or both, is a party, or by which any one of them is bound, or to which any of their properties are subject, or any existing law, administrative regulation, court order or consent decree to which any one of them is subject.

(c) There is no litigation or administrative proceeding pending or threatened to restrain or enjoin the transactions contemplated by this First Modification Agreement or questioning the validity hereof, or in any way contesting the existence or powers of Borrower or Guarantor, or in which an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this First Modification Agreement.

(d) Borrower and Guarantor are in full compliance with all of the terms and conditions of this First Modification Agreement, the Note and the Loan Documents, no event of default has occurred and is continuing with respect thereto and no event has occurred and is continuing which with the lapse of time or the giving of notice or both would constitute such an event of default, and Borrower and Guarantor hereby release and waive any and all (i) defenses to payment of obligations under the Note and the Loan Documents; and (ii) claims or causes of action which Borrower or Guarantor may have against Lender or its agents.

12. Not a Novation. Borrower, Guarantors, and Lender expressly state, declare and acknowledge that this First Modification Agreement is intended only to modify Borrower's and Guarantors' continuing obligations under the Note and the Loan Documents in the manner set forth herein and is not intended as a novation.

13. Entire Agreement. This First Modification Agreement sets forth all of the covenants, provisions, agreements, conditions and understandings of the parties relating to the subject matter of this First Modification Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. The parties hereto hereby agree that the terms of this First Modification Agreement supersede all of the terms, conditions and obligations of Lender set forth in all prior commitment letters, correspondence or other commitments (oral or written) between Borrower, Guarantors and Lender relating to this First Modification Agreement.

14. Additional Documents. Borrower and Guarantors agree to execute and deliver such other and further documents requested by Lender or its counsel to achieve the objectives of this First Modification Agreement, provided such other and further documents do not obligate Borrower to provide additional collateral for or materially increase Borrower's or Guarantors' obligations related to the Loan.

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15. Successors. This First Modification Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

16. Severability. In the event any provision of this First Modification Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

17. Amendments, Changes and Modifications. This First Modification Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

18. Construction.

a. The words "hereof", "herein", and "hereunder", and other words of a similar import refer to this First Modification Agreement as a whole and not to the individual sections in which such terms are used.

b. The headings of this First Modification Agreement are for convenience only and shall not define or limit the provisions hereof.

c. Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

d. Any capitalized terms not defined herein shall retain the meaning as set forth in the Loan Documents.

19. Execution of Counterparts. This First Modification Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

20. Governing Law. This First Modification Agreement is prepared and entered into with the intention that the law of the State of Illinois shall govern its construction and enforcement.

21. Effective Date. The effective date of this First Modification Agreement shall be as of the date hereof.


[signatures contained on the following page]

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IN WITNESS WHEREOF, the parties have executed this First Modification Agreement as of the date first above written.

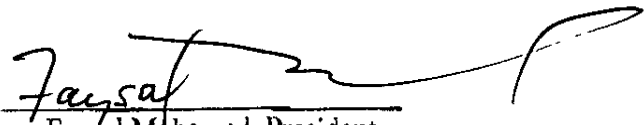
LENDER:

FIRST BANK AND TRUST COMPANY OF ILLINOIS


By: 
Its: ROBERT J. WALTER
EXECUTIVE VICE PRESIDENT

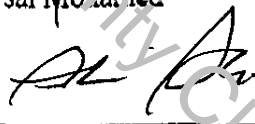
BORROWER:

AREA WIDE 71ST & PULASKI, INC., an Illinois corporation

By: 
Faysal Mohamed, President

GUARANTOR:


Faysal Mohamed


Ali Ata

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OFFICIAL SEAL
ANTHONY ALLEN GREEN, SR.
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires June 30, 2013

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STATE OF ILLINOIS)
)
COUNTY OF Cook) SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Ali Ata, 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 said company, for the uses and purposes therein set forth.

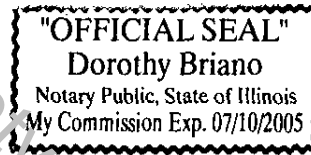
GIVEN under my hand and notarial seal, this 16 day of ^{Jan 2003} ~~December~~, 2002.

Dorothy Briano
NOTARY PUBLIC

(SEAL)

My Commission expires:

07-10-2005



A. Ata
ALI D. ATA

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EXHIBIT A

MORTGAGED PREMISES

PARCEL 1:

LOTS 17 TO 25 (EXCEPT THAT PART OF LOTS 17 TO 25 LYING WEST OF A LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE NORTH LINE OF LOT 16, SAID POINT BEING 17.13 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT AS ORGINALLY PLOTTED; THENCE SOUTHERLY TO A POINT IN THE NORTH LINE OF LOT 20, SAID POINT BEING 20 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 20 AS ORGININALLY PLOTTED; THENCE SOUTHERLY TO A POINT ON THE NORTH LINE OF LOT 25, SAID POINT BEING 26 FEET EAST OF THE NORTHWEST CORNER OF LOT 25 AS ORGINALLY PLOTTED; THENCE SOUTH ALONG A CONTINUATION OF SAID LINE 14 FEET TO A POINT OF TANGENCY OF A CURVE CORNER TO THE SOUTHWEST HAVING A RADIUS OF 11 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE TO A POINT IN THE SOUTH LINE OF SAID LOT 25, SAID POINT BEING 37 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT 25) IN BLOCK 13 IN W.D. MARDOCKS MARQUETTE PARK ADDITION, BEING A SUBDIVISION OF (EXCEPT THE EAST 50 FEET) THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 26 AND THE WEST 19 FEET OF LOT 27 IN BLOCK 13 IN W.D. MARDOCKS MARQUETTE PARK ADDITION, BEING A SUBDIVISION OF (EXCEPT THE EAST 50 FEET) THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 16 (EXCEPT THAT PART LYING WEST OF A LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE NORTH LINE OF LOT 16, SAID POINT BEING 17.13 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT AS ORGINALLY PLOTTED; THENCE SOUTHERLY TO A POINT IN THE NORTH LINE OF LOT 20, SAID POINT BEING 20 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 20 AS ORGININALLY PLOTTED) IN BLOCK 13 IN W.D. MURDOCKS MARQUETTE COOK ADDITION, BEING A SUBDIVISION OF (EXCEPT THE EAST 50 FEET) OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

LOT 15 IN BLOCK 13 IN W.D. MARDOCKS MARQUETTE PARK ADDITION, BEING A SUBDIVISION OF (EXCEPT THE EAST 50 FEET) THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 5:

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EXHIBIT A

MORTGAGED PREMISES

ALL OF THE NORTH-SOUTH 16 FOOT PUBLIC ALLEY LYING EAST OF THE EAST LINE OF LOTS 16 TO 25, BOTH INCLUSIVE, LYING WEST OF THE WEST LINE OF LOTS 15 AND 26, LYING WEST OF A LINE DRAWN FROM THE POINT OF INTERSECTION OF THE WEST AND SOUTHWESTERLY LINES OF LOT 15 TO THE POINT OF INTERSECTION OF THE WEST AND NORTHWESTERLY LINES OF LOT 26, LYING SOUTH OF A LINE DRAWN FROM THE NORTHWEST CORNER OF LOT 15 TO THE NORTHEAST CORNER OF LOT 16 AND LYING NORTH OF A LINE DRAWN FROM THE SOUTHEAST CORNER OF LOT 25 TO THE SOUTHWEST CORNER OF LOT 26 ALL IN BLOCK 13 IN W.D. MARDOCKS MARQUETTE PARK ADDITION, BEING A SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE EAST 50 FEET THEREOF), IN COOK COUNTY, ILLINOIS.

AND;

ALL THAT PART OF THE EAST WEST 16 FOOT INCREASING TO A 26 FOOT PUBLIC ALLEY LYING SOUTH AND SOUTHWESTERLY OF THE SOUTH AND SOUTHWESTERLY LINES OF LOT 15, LYING NORTH AND NORTHWESTERLY OF THE NORTH AND NORTHWESTERLY LINES OF LOT 26, LYING EAST OF A LINE DRAWN FROM THE POINT OF INTERSECTION OF THE WEST AND SOUTHWESTERLY LINES OF LOT 15 TO THE POINT OF INTERSECTION OF THE WEST AND NORTHWESTERLY LINES OF LOT 26 AND LYING WEST OF THE NORTHERLY EXTENSION OF THE WEST LINE OF THE EAST 16.00 FEET OF THE WEST 19.00 FEET OF LOT 27 IN BLOCK 13 IN W.D. MURDOCK'S MARQUETTE PARK ADDITION AFORESAID, SAID PUBLIC ALLEY AND PART OF PUBLIC ALLEY HEREIN VACATED BEING FURTHER DESCRIBED AS ALL OF THE NORTH-SOUTH 16 FOOT ALLEY TOGETHER WITH EMT WEST 28.0 FEET, MORE OR LESS, THE EAST-WEST 16 FOOT INCREASING TO A 26 FOOT PUBLIC ALLEY IN THE BLOCK BOUNDED BY W. 70TH PLACE, W. 71ST STREET, S. PULASKI ROAD AND S. SPRINGFIELD AVENUE.

30284752



PERM TAX#

19-23-328-001-0000 1 OF 12

THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. (L 16 PARCEL 3)

19-23-328-002-0000 2 OF 12

THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. (L 17 PARCEL 1)

19-23-328-003-0000 3 OF 12

THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. (L 18 PARCEL 1)

19-23-328-004-0000 4 OF 12

THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. (L 19 PARCEL 1)

19-23-328-005-0000 5 OF 12

THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. (L 20 PARCEL 1)

19-23-328-006-0000 6 OF 12

THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. (L 21 PARCEL 1)

19-23-328-007-0000 7 OF 12

THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. (L 22 PARCEL 1)

19-23-328-008-0000 8 OF 12

THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. (L 23 PARCEL 1)

19-23-328-009-0000 9 OF 12

THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. (L 24 PARCEL 1)

19-23-328-010-0000 10 OF 12

THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. (L 25 PARCEL 1)

19-23-328-011-0000 11 OF 12

THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. (L 15, PARCEL 4)

19-23-328-046-0000 12 OF 12

THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. (L 46 & WEST 19 FT LOT 17)

Clerk of Cook County Clerk's Office

30284752