

UNOFFICIAL COPY



Doc#: 0328334196  
Eugene "Gene" Moore Fee: \$40.00  
Cook County Recorder of Deeds  
Date: 10/10/2003 04:07 PM Pg: 1 of 9

This Instrument Prepared By and After  
Recording Should Be Returned to:  
Charter One Bank, N.A.  
1215 Superior Avenue, 6<sup>th</sup> Floor  
Cleveland, Ohio 44114  
Attn: Commercial Loan Servicing Dept.  
Mail Code: SU670

Property of Cook County Clerk's Office

LOAN MODIFICATION AGREEMENT

Loan No. 63-1163453

9

This Loan Modification Agreement (hereinafter referred to as the "Agreement") is entered into by and among 441 W. BARRY, LLC, an Illinois limited liability company (hereinafter collectively referred to as "Borrower"), ROBERT J. BUFORD (hereinafter referred to as "Guarantor") and CHARTER ONE BANK, N.A., a corporation organized and doing business under the laws of the United States of America formerly Charter One Bank, F.S.B., successor by merger to Liberty Federal Bank (hereinafter referred to as "Lender").

WITNESSETH:

WHEREAS, Borrower obtained a loan (the "Loan") from Liberty Federal Bank (hereinafter referred to as "Liberty Federal") in the original amount of Two Million Nine Hundred Fifty Thousand Dollars U.S. (\$2,950,000.00) which loan is evidenced by a promissory note (hereinafter referred to as the "Note"), dated July 1, 1998, executed by Borrower; and

WHEREAS, the Guarantor executed a guaranty (hereinafter referred to as the "Guaranty") of even date with the Note, which guarantees the repayment of the Loan; and

WHEREAS, the Note is secured by a mortgage and security agreement (hereinafter referred to as the "Mortgage") of even date with the Note, from Borrower to Liberty Federal, which Mortgage was recorded on July 8, 1998 at 14:23:00 as Instrument No. 98588277 of the Official Records of Cook County, Illinois, and covers certain real property located in said County more fully described on Exhibit A attached hereto and made a part hereof (the "Property"); and

CC124554

# UNOFFICIAL COPY

WHEREAS, Borrower and Guarantor have also executed other documents evidencing, securing and relating to Borrower's obligations concerning the Loan (collectively, such documents together with the Note, the Guaranty and the Mortgage are referred to herein as the "Loan Documents"); and

WHEREAS, effective as of July 2, 2001, Charter One Bank, F.S.B. became the successor in interest to the Loan by virtue of the merger with Liberty Federal Bank; and on May 7, 2002, Charter One Bank, F.S.B. converted from a federal savings bank to a national banking association and changed its name to Charter One Bank, N.A.; and

WHEREAS, the principal balance outstanding on the Loan, as evidenced by the Note is Two Million Seven Hundred Sixty-Nine Thousand Two Hundred Dollars and Twelve Cents U.S. (\$2,769,200.12), after application of all payments due and owing on the Note through and including August 1, 2003; and

WHEREAS, all of the terms, conditions, provision and covenants contained in the Loan Documents are desired by Borrower, Guarantor and Lender to be and are hereby incorporated by reference herein as if fully rewritten herein all unchanged except to the extent modified herein.

NOW, THEREFORE, for good and valuable consideration, the mutuality, sufficiency and receipt of which is hereby acknowledged, Borrower, Guarantor and Lender agree as follows:

1. THE LOAN DOCUMENTS:

The Note and the Mortgage shall be amended as follows:

RATE OF INTEREST. On September 1, 2003, the rate of interest shall be adjusted to be equal to four and one-half percent (4.50%) per annum. On September 1, 2008 (the "Change Date"), the rate of interest hereon shall be adjusted to be equal to the greater of: (a) four and twenty-five one-hundredths percent (4.25%); or (b) one hundred fifty (150) basis points plus the Current Index. The adjusted rate of interest will become effective on the Change Date. The "Index" shall be the interest rate for Fixed Rate Advances for a term of five (5) years as published by the Federal Home Loan Bank of Cincinnati on its website at <http://www.fhlbcin.com>. The most recent index figure available on the Change Date is called the "Current Index". Interest shall be computed on the aggregate principal sum outstanding from time to time, on a basis of a three hundred sixty (360) day year, but shall be charged for the actual number of days within the period for which interest is being charged.

REPAYMENT. Principal and interest shall be payable in monthly installments as follows:

On the first day of October, 2003 and continuing on the first day of each and every month thereafter up to and including September 1, 2008, the Borrower shall pay to the order of Lender monthly installments of principal and interest in the amount of Fourteen Thousand One Hundred Sixteen Dollars and Nineteen Cents U.S. (\$14,116.19).

# UNOFFICIAL COPY

On October 1, 2008, the installments of principal and interest shall be adjusted by the Lender based upon changes in the rate of interest, so that the changed installments would be sufficient to repay the principal hereunder in full over a thirty (30) year amortization, beginning with September 1, 2003. In any event, if not sooner paid, on the first day of July, 2013 (the "Maturity Date"), Borrower shall pay to Lender the unpaid principal balance then outstanding under the Note in full, together with all accrued but unpaid interest and other sums due Lender under the Note or any of the Loan Documents.

PREPAYMENT. Borrower shall have the right to prepay all, or any portion, of the unpaid principal amount of the indebtedness evidenced by the Note, together with (a) any accrued and unpaid interest thereon, and (b) a prepayment premium equal to the product obtained by multiplying (i) the principal amount of the prepayment, and (ii) the Percentage set forth below for the Loan Year (hereinafter defined) during which such prepayment was made:

<u>Loan Year</u>	<u>Percentage</u>
1	5.00%
2	4.00%
3	3.00%
4	2.00%
5	1.00%
6	1.00%
7 and thereafter	-0-

Notwithstanding the above, Borrower may prepay, without penalty, at any time during each of the above Loan Years, up to ten percent (10%) of the principal balance due on the Loan at the commencement of each Loan Year. As used herein, the term "Loan Year" shall mean each successive one (1)-year period, the first such Loan Year commencing on September 1, 2003, and each succeeding Loan Year commencing on each successive anniversary of September 1, 2003. The payment of any partial prepayment shall not relieve Borrower from the obligation to make subsequent scheduled monthly installments of principal and interest due hereunder.

In the event that Lender shall accelerate the maturity of the Note due to Borrower's default under the Note or under any of the Loan Documents, and there shall be tendered to Lender, whether by Borrower or upon distribution of proceeds of foreclosure sale, an amount equal to the entire unpaid principal balance of the indebtedness evidenced hereby, together with all accrued and unpaid interest thereon and all other sums or charges due hereunder or under any of the Loan Documents, such tender shall be deemed to be a voluntary prepayment of the Note and incomplete and ineffective unless such tender is accompanied by the prepayment premium computed as set forth above. Lender shall be entitled, to the fullest extent not then prohibited by applicable law, to recover such prepayment premium in any proceedings, at foreclosure or otherwise, to enforce collection of the indebtedness evidenced hereby. Recovery of the prepayment premium shall be a condition precedent to Lender's acceptance of such prepayment. Without limiting the generality of the foregoing, the amount of such

# UNOFFICIAL COPY

prepayment premium so computed shall be included in and a part of the aggregate indebtedness evidenced hereby and secured by the Loan Documents upon the prosecution of foreclosure proceedings and/or the exercise of other rights or remedies by the Lender in the event of a default by the Borrower.

The following shall not be deemed a voluntary prepayment of the Note and there shall be no prepayment premium due and payable as a result thereof: (a) the application of insurance proceeds which become available, or any other damages recovered in connection with any eminent domain proceeding, by Lender in reduction of the indebtedness evidenced hereby in accordance with the terms of the Mortgage (hereinafter defined); and (b) acceleration of the indebtedness evidenced hereby as a result of imposition of a mortgage tax or other tax or action adversely affecting the value of the Mortgage, in accordance with Paragraph 7 of the Mortgage.

## 2. PRIORITY OF MORTGAGE.

The Mortgage shall in all respects as of the date of recording of this Agreement be a valid and existing first mortgage lien covering the Property (less any part thereof previously released by Lender), and such priority of the Mortgage shall be evidenced by an ALTA Mortgagee's policy of title insurance acceptable to Lender in all respects.

## 3. FEES.

Borrower shall pay to Lender, on or before the date hereof, a loan modification fee equal to Thirteen Thousand Eight Hundred Twenty-Eight Dollars U.S. (\$13,828.00) and a documentation fee equal to Five Hundred Dollars U.S. (\$500.00) for a total of Fourteen Thousand Three Hundred Twenty-Eight Dollars U.S. (\$14,328.00) in fees due on or before the date hereof. Borrower will also be responsible for filing and title endorsement fees.

## 4. REPRESENTATIONS AND WARRANTIES.

To induce Lender to execute and perform this Agreement, Borrower and Guarantor, for and on behalf of itself, hereby represents, covenants and warrants to Lender that:

(a) Borrower is an Illinois limited liability company, duly organized and validly existing under the laws of the State of Illinois, and has full power and authority to conduct its business as presently conducted, to own and operate the Property, to execute this Agreement, and to perform all of its duties and obligations under this Agreement and each of the Loan Documents. Such execution and performance has been duly authorized by all necessary resolutions and action. Upon the execution hereby by Borrower, this Agreement shall constitute legal, valid and binding obligations of Borrower enforceable in accordance with its terms;

(b) Clark/Diversey Properties Limited Partnership is an Illinois limited partnership, duly organized and validly existing under the laws of the State of Illinois, and has full power and authority to conduct its business as presently conducted, to own and operate the Property, to execute this Agreement, and to perform all of its duties and

# UNOFFICIAL COPY

obligations under this Agreement and each of the Loan Documents. Such execution and performance has been duly authorized by all necessary partnership resolutions and action. Upon the execution hereby by Borrower, this Agreement shall constitute legal, valid and binding obligations of Borrower enforceable in accordance with its terms;

(c) Diversey Clark, Inc. is an Illinois corporation, duly organized and validly existing under the laws of the State of Illinois, and has full power and authority to conduct its business as presently conducted, to own and operate the Property, to execute this Agreement, and to perform all of its duties and obligations under this Agreement and each of the Loan Documents. Such execution and performance has been duly authorized by all necessary corporate resolutions and action. Upon the execution hereby by Borrower, this Agreement shall constitute legal, valid and binding obligations of Borrower enforceable in accordance with its terms;

(d) No changes have been made to Borrower's organizational documents;

(e) No changes have been made to Clark/Diversey Properties Limited Partnership's organizational documents;

(f) No changes have been made to Diversey Clark, Inc.'s organizational documents;

(g) Guarantor and/or immediate family members of Guarantor are direct or indirect owners of some interest in Borrower;

(h) Borrower and Guarantor reaffirm each of their respective applicable Representations and Warranties contained in the Loan Documents as of the date of their respective execution hereof; and

(i) Guarantor has not revoked, attempted to revoke or has any intention to revoke its Guaranty and hereby reaffirms its respective obligations thereunder as and to the extent amended or modified hereby.

## 5. RECORDING; EFFECTIVE DATE.

This Agreement shall be effective upon its recording by Lender in the Mortgage Records of Cook County, Illinois, provided that the requirements of Paragraphs 2 and 3 of this Agreement have been satisfied in Lender's sole determination.

# UNOFFICIAL COPY

6. HEADINGS.

Paragraph or other headings contained in this Agreement are for reference purposes only and are not intended to affect in any way the meaning or interpretation of this Agreement.

7. ENTIRE AGREEMENT.

This Agreement constitutes the entire Agreement among the parties hereto concerning the subject matter hereof, and there are no agreements, understandings, warranties, or representations among the parties except as specifically set forth in or specifically referenced in this Agreement. The terms, conditions, provisions and covenants of the Note, the Guaranty and the Mortgage, the First Modification and the other Loan Documents shall remain unchanged except to the extent specifically modified hereby.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors, permitted transferees and assigns.

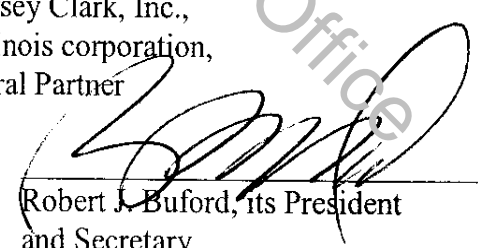
IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement in triplicate on August 14, 2003.

BORROWER:

441 W. BARRY, LLC,  
an Illinois limited liability partnership

By: Clark/Diversey Properties Limited Partnership,  
an Illinois limited partnership,  
Managing Member

By: Diversey Clark, Inc.,  
an Illinois corporation,  
General Partner

By:   
Robert J. Buford, its President  
and Secretary

GUARANTOR:

  
ROBERT J. BUFORD, an Individual



# UNOFFICIAL COPY

LENDER:

CHARTER ONE BANK, N.A.

By: Donald L Baker

**DONALD L. BAKER**  
**SENIOR VICE PRESIDENT**  
**CHARTER ONE BANK, N.A.**

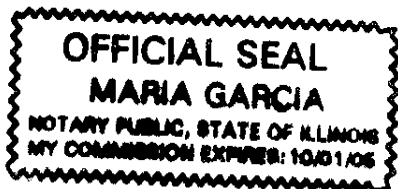
Property of Cook County Clerk's Office

STATE OF ILLINOIS )  
COUNTY OF Cook ) ss.

Before me, a Notary Public in and for said County and State, personally appeared the above-named 441 W. BARRY, LLC, an Illinois limited company, by Clark/Diversey Properties Limited Partnership, an Illinois corporation, its Managing Member, by Diversey Clark, Inc., an Illinois corporation, its General Partner, by Robert J. Buford, its President and Secretary, who acknowledged that he did sign the foregoing instrument for and on behalf of said limited liability company, limited partnership and corporation, and that the same is the free act and deed of said limited liability company, limited partnership and corporation and the free act and deed of him personally and as such Managing Member of said limited liability company, General Partner of said limited partnership and officer of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at Chicago, Illinois, this 14 day of August, 2003.

Maria Garcia  
Notary Public

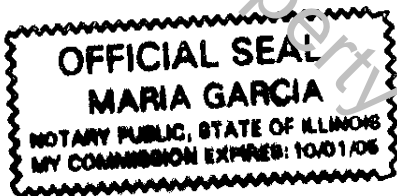


# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

Before me, a Notary Public in and for said County, this day personally appeared the above-named ROBERT J. BUFORD, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of him personally.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at Chicago, Illinois, this 14 day of August, 2003.



Maria Garcia  
Notary Public

STATE OF OHIO )  
 ) ss.  
COUNTY OF Cuyahoga )

Before me, a Notary Public in and for said County and State, personally appeared the above-named CHARTER ONE BANK, N.A., by Donald L. Baker, its Senior Vice Pres., who acknowledged that he did sign the foregoing instrument for and on behalf of said corporation, and that the same is the free act and deed of said corporation and the free act and deed of him personally and as such officer.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at Cleveland, this 15 day of August, 2003.



Robert A. Mihalko  
Notary Public

**Robert A. Mihalko**  
Notary Public, STATE OF OHIO  
My Commission Expires February 2005  
(Recorded in Lorain County)



**UNOFFICIAL COPY** 03-1163453

EXHIBIT A

LEGAL DESCRIPTION

LOTS 34 AND 35 IN CULVER'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE SOUTH 20 RODS OF THE NORTH 60 RODS ALSO THE SOUTH 1/4 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 441 W. BARRY, CHICAGO, ILLINOIS

P.I.N. 14-28-109-027

Property of Cook County Clerk's Office