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Doc#: 0422242131
Eugene "Gene" Moore Fee: \$42.00
Cook County Recorder of Deeds
Date: 08/09/2004 09:42 AM Pg: 1 of 10

THIS INSTRUMENT PREPARED BY:
Christyl Marsh
Cohen, Salk & Huvard, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062

AND AFTER RECORDING MAIL TO:
Lorenzo Pate
Oak Brook Bank
1400 Sixteenth Street
Oak Brook, Illinois 60523

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (hereinafter referred to as the "Modification Agreement") made as of this 30th day of June, 2004, by and among 1031 N. PAULINA LLC, an Illinois limited liability company ("Paulina"), MIKE ZUCKER, KENNY MOTEW and TIMOTHY FITTING (all of the foregoing, except Paulina, are collectively, the "Guarantors") (Paulina and Guarantors are hereinafter collectively referred to as the "Obligors") and OAK BROOK BANK, an Illinois banking corporation ("Lender").

WITNESSETH:

WHEREAS, Paulina has executed and delivered to Lender that certain mortgage note dated as of June 28, 2001, in the original principal sum of One Million and 00/100 (\$1,000,000.00) Dollars (the "Note"), which Note is secured by the following documents (the following documents and any and all other instruments executed by any Obligor are hereinafter collectively referred to as the "Loan Documents"):

- (i) mortgage and security agreement of even date therewith, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 0010596001 (the "Mortgage") on property commonly known as 1031 N. Paulina, Chicago, Illinois and legally described on Exhibit "A" attached hereto and made a part hereof (the "Premises");
- (ii) assignment of rents and of lessor's interest in leases dated of even date with the Note made by Paulina in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 0010596002 (the "Assignment of Rents");
- (iii) guaranty dated of even date with the Note made by Guarantors in favor of Lender; and
- (iv) environmental indemnity agreement dated of even date with the Note made by Obligors in favor of Lender.

WHEREAS, Obligors are desirous of (i) extending the Maturity Date of the Note from June 30, 2004 to June 30, 2007, and (ii) modifying the pre-payment provisions of the Note, and Lender is willing to consent to such changes subject to the terms and provisions hereinafter provided.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Mortgage held by Lender is a valid, first and subsisting lien on the

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Premises and that the execution of this Modification Agreement will not impair the lien of said Mortgage and that there is no existing second mortgage or other liens subsequent to the lien of the Mortgage held by Lender that will not be paid in full and released concurrently herewith (for breach of which conditions, or either of them, this Modification Agreement, at the sole election of Lender, shall not take effect and shall be void), **IT IS AGREED AS FOLLOWS:**

1. The parties represent and agree that the foregoing recitals are true and correct. All defined terms used herein and not otherwise defined shall have the meaning ascribed to such term as set forth in the Loan Documents.

2. As of June 30, 2004, the current outstanding principal balance of the Note is \$927,555.13. Notwithstanding anything to the contrary contained in this Agreement, the Note or the Loan Documents, Lender shall have no obligation to make any further disbursements under the Note. The Note is hereby modified as follows:

(a) Effective from and including June 30, 2004, the first three paragraphs, beginning with "For Value Received..." though and including "...the original Thirty (30) year amortization", are hereby amended and restated in their entirety to read as follows:

"FOR VALUE RECEIVED, 1031 N. PAULINA LLC, an Illinois limited liability company (hereinafter sometimes referred to as "Borrower"), promises to pay to the order of OAK BROOK BANK at its office at 2200 Waukegan Road, Glenview, Illinois 60025 (hereinafter sometimes referred to as the "Lender"), or such other place as the holder hereof may designate in writing, in the manner provided hereinafter and in the Mortgage securing this Note, the principal sum of One Million and 00/100 (\$1,000,000.00) Dollars on or before June 30, 2007, with interest from the date of first disbursement hereunder on the balance of principal remaining from time to time outstanding at the rate of five and thirteen one-hundredths percent (5.13%) per annum (subject to adjustment as hereinafter provided), which principal sum and interest shall be payable as follows:

(1) monthly installments of principal and interest in the amount of \$5,334.01 (subject to adjustment as hereinafter provided) on the first day of August, 2004, and on the first day of each and every month thereafter to and including June 1, 2007; and

(2) a final payment of principal, interest, and all other sums due and owing pursuant hereto and to the Mortgage and all other documents executed and delivered to secure the principal amount hereof, on June 30, 2007 ("Maturity Date").

Borrower acknowledges and agrees that (i) the interest rate charged on the unpaid principal balance of this Note is fixed at the rate of 5.13% for the period commencing on the date hereof and continuing up to, but not including, July 1, 2005 (such date being hereinafter call the "First Adjustment Date"), (ii) commencing on the First Adjustment Date and continuing up to, but not including, July 1, 2006 (the "Second Adjustment Date"), the interest rate charged on the unpaid principal balance of this Note shall be adjusted to a fixed interest rate per annum equal to Two Hundred Fifty (250) basis points above the one (1) year Federal Home Loan Bank rate, as announced by the Federal Home Loan Bank of Chicago, from time to time, fixed and fully amortizing for a \$927,555.13 advance (the "Index") as of the First Adjustment Date (or if the First Adjustment Date does not fall on a Banking Day, as hereinafter defined, then on the first Banking Day immediately preceding the First Adjustment Date), as conclusively determined by Lender, and (iii) commencing on the

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Second Adjustment Date and continuing for the balance of the term of this Note, the interest charged on the unpaid principal balance of this Note shall be adjusted to a fixed interest rate per annum equal to Two Hundred Fifty (250) basis points above the Index as of the Second Adjustment Date (or if the Second Adjustment Date does not fall on a Banking Day, as hereinafter defined, then on the first Banking Day immediately preceding the Second Adjustment Date), as conclusively determined by Lender. If the Index becomes unavailable, Lender, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to be used to determine such Index. "Banking Day" shall mean each and all days other than a Saturday, Sunday or a legal holiday on which national banks are authorized or required to be closed for the conduct of commercial banking business in Chicago, Illinois.

Borrower acknowledges and agrees that if the adjusted interest rate to be charged on this Note on and after the First Adjustment Date or the Second Adjustment Date, calculated in accordance with the preceding paragraph, shall exceed 5.13% per annum, Lender may by written notice to Borrower, increase the amount of the remaining monthly principal and interest payments due on this Note for the balance of the term hereof based on a continuation of the original Twenty-Seven (27) year amortization."

(b) The sixth paragraph on page 2 of the Note is hereby amended and restated in its entirety to read as follows:

"Borrower may prepay the loan in whole but not in part, upon thirty (30) days prior written notice and upon payment to Lender of a prepayment premium equal to three percent (3%) of the loan balance if paid in the first (1st) loan year, two percent (2%) of the loan balance if paid in the second (2nd) loan year and one percent (1%) of the loan balance if paid in the third (3rd) loan year. For purposes of this Note, a loan year shall mean each 12 month period following June 30, 2004. If prior to the Maturity Date, an Event of Default (as hereinafter defined) exists and Lender elects to declare all principal and interest hereunder immediately due and payable, the tender of payment of the amount of such entire indebtedness hereunder, made at any time prior to sale under foreclosure of the Mortgage or the realization of any other collateral which secures this Note, shall be deemed to constitute an evasion of the foregoing prepayment provisions, and such payment shall therefore, to the extent permitted by law, include liquidated damages in the amount of the prepayment premium set forth in this paragraph, it being acknowledged that Lender's actual damages in the event of such evasion are now and will then be impossible to ascertain. No prepayment shall extend or postpone the due date of any subsequent monthly installment of principal or interest arising hereunder. Borrower hereby expressly agrees to pay the above-described prepayment premium upon the voluntary or involuntary prepayment of this Note, and acknowledges that Lender's agreement to make the Loan evidenced by this Note on the terms contained herein constitute adequate consideration for the prepayment premium. Notwithstanding the foregoing, no prepayment premium shall be due and payable if the Premises are sold to a bona-fide third-party purchaser, in an arms length transaction, as determined by Lender is its sole discretion."

3. The Mortgage is hereby modified by deleting the date "30th day of June, 2004" as it appears in the fifth line in the first "Whereas" paragraph on page 1, and replacing it with the date "30th day of June, 2007".

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4. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Note, as hereby modified and amended. Any reference in the Note or the Loan Documents to the "Maturity Date" of the Note shall hereafter mean "June 30, 2007".

5. Except for the modifications stated herein, the Note and Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the Note and other Loan Documents and each other instrument or agreement delivered by any Obligor to or for the benefit of Lender in connection with the loan shall remain in full force and effect in accordance with their respective terms and the execution and delivery of this Modification Agreement shall not operate to waive any rights or remedies that Lender may have with respect to the Note and other Loan Documents, to forgive or waive any violation, default or breach under the Note or any other Loan Document, or to obligate Lender in any manner to make any further extensions of credit other than as expressly set forth herein.

6. Contemporaneously with the execution of this Modification Agreement by Lender, Obligors shall pay to Lender a non-refundable modification fee in the amount of \$2,318.99, plus all of Lender's attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification Agreement, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees necessitated by or otherwise relating to this Modification Agreement (the "Additional Fees"). If any of the Additional Fees are not paid at the time this Modification Agreement is executed by Lender, such Additional Fees shall be paid by Obligors within five days after written demand therefor by Lender, and if not timely paid, they shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate (as defined in the Note).

7. The Premises described in the Mortgage shall remain in all events subject to the lien, charge or encumbrance of the Mortgage, or conveyance of title (if any) effected thereby, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to affect the lien, charge or encumbrance of, or warranty of title in, or conveyance effected by the Mortgage, or the priority thereof over liens, charges, encumbrances or conveyances, or, except as expressly provided herein, to release or affect the liability of any party or parties whomsoever may now or hereafter be liable under or on account of the Note and/or Mortgage, nor shall anything herein contained or done in pursuance thereof affect or be construed to affect any other security or instrument, if any, held by Lender as security for or evidence of the aforesaid indebtedness.

8. This Modification Agreement shall extend to and be binding upon each of the Obligors and their heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

9. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Note and other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that he or it have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Note and other Loan Documents, as so amended.

10. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois, including all matters of construction, validity and performance.

11. This Modification Agreement constitutes the entire agreement between the parties with respect to the aforesaid Modification and shall not be amended or modified in any way except by a document in writing executed by all of the parties thereto.

12. This Modification Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

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12. This Modification Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

13. Lender's consent to this Modification Agreement shall be subject to Lender (or Lender's nominee) having received the following in a form and substance acceptable to Lender on or before August 15, 2004 (the "Modification Termination Date"):

(a) An endorsement to Chicago Title Insurance Company Loan Policy No. 1401 007941152 (the "Title Policy") which (i) amends the description of the Mortgage insured under the Title Policy to include this Modification Agreement, (ii) amends the description of the Assignment of Rents to include this Modification Agreement, (iii) extends the effective date of the Title Policy to the date of the recording of this Modification Agreement, (iv) includes no additional exceptions to title other than those that have been approved in writing by Lender and (v) states that all real estate taxes and assessments applicable to the Premises which are due and payable as of the date of such endorsement have been paid in full; and

(b) Such other documents as Lender may reasonably require.

The Obligors' failure to deliver the aforementioned documents and items to Lender on or before the Modification Termination Date shall, at the option of Lender, result in this Modification Agreement (including all agreements and waivers of Lender contained herein) being null and void.

14. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.


TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF OBLIGORS AND LENDER WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR THE TRANSACTION RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY OBLIGOR OR LENDER MAY FILE A COPY OF THIS EXECUTED MODIFICATION AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OBLIGOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

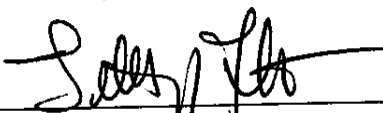
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IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

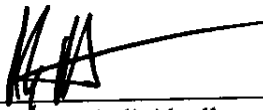
1031 N. PAULINA LLC, an Illinois limited liability company

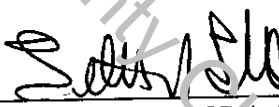
By: 
Mike Zucker, Manager

By: 
Kenny Motew, Manager

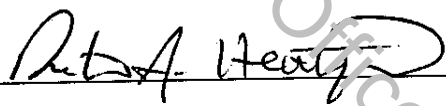
By: 
Timothy Fitting, Manager


MIKE ZUCKER, individually


KENNY MOTEW, individually


TIMOTHY FITTING, individually

OAK BROOK BANK

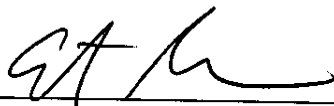
By: 
Its: VP

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that MIKE ZUCKER, KENNY MOTEW and TIMOTHY FITTING, personally known to me as the managers, of 1031 N. PAULINA LLC, an Illinois limited liability company and 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, sealed and delivered the said instrument as such managers of said limited liability company, pursuant to authority, given by the members of said limited liability company, as their own and 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 this 22 day of July, 2004.



Notary Public

My Commission Expires: 3-28-07



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

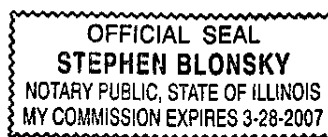
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT MIKE ZUCKER, personally known to me to be the same person whose name is subscribed to the foregoing instrument, personally appeared before me this day and of his own free will, subscribed his name to the foregoing instrument for the uses and purposes therein contained.

Given under my hand and notarial seal this 27 day of July, 2004.



Notary Public

My Commission Expires: 3-28-07



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STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

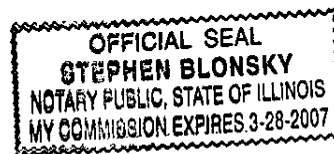
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT KENNY MOTEW, personally known to me to be the same person whose name is subscribed to the foregoing instrument, personally appeared before me this day and of his own free will, subscribed his name to the foregoing instrument for the uses and purposes therein contained.

Given under my hand and notarial seal this 27 day of July, 2004.



 Notary Public

My Commission Expires: 3-28-07



STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

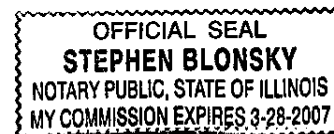
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT TIMOTHY FITTING, personally known to me to be the same person whose name is subscribed to the foregoing instrument, personally appeared before me this day and of his own free will, subscribed his name to the foregoing instrument for the uses and purposes therein contained.

Given under my hand and notarial seal this 27 day of July, 2004.



 Notary Public

My Commission Expires: 3-28-07

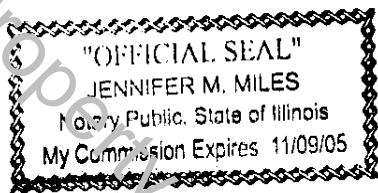


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STATE OF ILLINOIS)
)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Richard A. Reinfield of Oak Brook Bank, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such VP, 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 this 2nd day of August, 2004.



Jennifer M Miles
Notary Public

My Commission Expires: _____

Property of Cook County Clerk's Office

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EXHIBIT "A"

PIN: 17-06-419-005-0000

ADDRESS: 1031 North Paulina, Chicago, IL

THE SOUTH 1/2 OF LOT 18 IN BLOCK 10 IN JOHNSON'S SUBDIVISION OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.