

UNOFFICIAL COPY

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



Doc#: 0509603094
Eugene "Gene" Moore Fee: \$44.50
Cook County Recorder of Deeds
Date: 04/06/2005 12:45 PM Pg: 1 of 11

P.I.N.: 14-20-318-043-0000
COMMONLY KNOWN AS: 1346 W. Henderson, Chicago, Illinois

THIRD LOAN MODIFICATION AND ASSUMPTION AGREEMENT

This instrument is a Third Loan Modification and Assumption Agreement ("Third Modification") among The PrivateBank and Trust Company, an Illinois banking corporation ("Lender"), Patch Holdings, LLC, an Illinois limited liability company ("Patch"), 1346 West Henderson Street Corp., an Illinois corporation ("Borrower"), Michael W. Collyer ("Collyer"), individually and as Trustee of the Michael W. Collyer Declaration of Trust dated May 3, 1999 and Lisa S. Collyer, individually and as Trustee of the Lisa S. Collyer Declaration of Trust dated May 3, 1999 (collectively "Guarantors").

RECITALS:

A. On July 12, 1996, Collyer held fee simple title to certain real estate ("Real Estate") commonly known as 1346 N. Henderson, Chicago, Illinois, which is legally described on Exhibit A attached hereto. On even date therewith, Collyer executed and delivered to Lender an Adjustable Rate Note in the amount of \$250,000 ("Note"), which evidenced a loan in the amount of \$250,000 ("Loan"). To secure the Note, Collyer executed and delivered to Lender the following documents ("Security Documents"):

UNOFFICIAL COPY

1. a Mortgage ("Mortgage") executed by Collyer covering the Real Estate, which Mortgage was recorded with the Cook County Recorder of Deeds on July 30, 1996 as Document No. 96-579632;

2. a UCC-1 Financing Statement executed by Collyer; and

3. certain other loan documents as required by Lender.

B. On April 1, 1998, Collyer and Lender entered into a Note and Mortgage Modification Agreement ("Modification"), pursuant to which Lender agreed to modify the interest rate applicable to the Note. The Modification was recorded with the Cook County Recorder of Deeds on June 19, 1998 as Document No. 98-525218.

C. On May 22, 2002, Collyer executed a Quit Claim Deed granting the Real Estate to Patch and recorded said deed with the Cook County Recorder of Deeds on May 23, 2002 as Document No. 0020590947.

D. On June 18, 2003, Patch, Guarantors and Lender entered into a Second Loan Modification and Assumption Agreement ("Second Modification") pursuant to which Lender agreed to adjust the interest rate applicable to the Loan and consent to the title transfer of the fee simple from Collyer to Patch. Pursuant to the Second Modification, Guarantors executed Guaranties of Note, Mortgage and Other Undertakings ("Original Guaranties"). The Second Modification was recorded with the Cook County Recorder of Deeds on July 24, 2003 as Document No. 0320516061.

E. On August 9, 2004, Patch executed a Quit Claim Deed granting the Real Estate to Borrower and recorded said deed with the Cook County Recorder of Deeds on October 29, 2004 as Document No. 0430341082.

F. The outstanding balance of the Note as of February 1, 2005 is \$219,203.65. Patch and Borrower have now requested Lender to consent to the transfer of the fee simple ownership of the Real Estate from Patch to Borrower. Lender is agreeable to this request subject to the covenants, conditions and restrictions contained herein.

UNOFFICIAL COPY

NOW, THEREFORE, in consideration of good and valuable consideration, the parties agree as follows:

1. The Note is hereby modified and amended to change the name of the Borrower in the first paragraph and on the signature page from Michael W. Collyer to that of 1346 West Henderson Street Corp., an Illinois corporation. The Security Documents are hereby modified and amended to secure the Note as hereby revised and the Security Documents are hereby modified and amended to refer to the Note as revised by this Third Modification in place of the Note as originally executed.

2. The Mortgage and other Security Documents are hereby modified and amended to replace all references to "Owner" or "Borrower" with 1346 West Henderson Street Corp., an Illinois corporation.

3. Lender hereby consents to the conveyance of the Real Estate from Patch to Borrower, and Lender agrees that such conveyance shall not be an Event of Default pursuant to the Mortgage and other Security Documents. Lender's consent herein shall not be considered as a consent to any future conveyance of either the Real Estate or any shareholder interest of Borrower. The sole shareholders and officers of Borrower shall only be Collyer and Lisa S. Collyer or such other persons as are consented to in writing by Lender. The Security Documents are not modified or amended in any way, and shall remain in full force and effect.

4. Borrower hereby agrees to pay to Lender the outstanding indebtedness of the Loan as evidenced by Note as hereby revised and agrees to perform all covenants and conditions contained in the Mortgage and other Security Documents as if Borrower had originally executed the Note, Mortgage and Security Documents.

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

(a) Guaranties of Note, Third Modification and Assumption Agreement, Mortgage and Other Undertakings (2) of Guarantors ("Revised Guaranties");

UNOFFICIAL COPY

- (b) a UCC Financing Statement of Borrower;
- (c) a UCC Authorization executed by Borrower;
- (d) a date down endorsement to Lender's loan title insurance policy or endorsement which insures the Mortgage as modified by this Third Modification as a first lien on the Real Estate, subject only to such exceptions as Lender shall permit, and which reflects and insures that Borrower is now the holder and owner of fee simple interest to the Real Estate;
- (e) a certified copy of any amendments to the trust agreement for the Michael W. Collyer Declaration of Trust dated May 3, 1999;
- (f) a certified copy of any amendments to the trust agreement for the Lisa S. Collyer Declaration of Trust dated May 3, 1999;
- (g) a certified copy of the recorded Quitclaim Deed transferring title of the Real Estate from Patch to Borrower;
- (h) organizational documents of Borrower, including Articles of Incorporation, By-Laws and a Corporate Resolution;
- (i) updated certificates of insurance as required by Section 4 of the Mortgage; and
- (j) a Loan Settlement Statement showing payment of Lender's expenses as described in Section 8 hereof.

6. This Third 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 as hereby revised ("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, this Third Modification, the Second Modification, the Modification, the Security Documents, or the covenants, conditions and agreements therein contained or contained in the Note as hereby revised.

UNOFFICIAL COPY

7. 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.

8. Borrower hereby agrees to pay all of Lender's expenses arising out of and in connection with this Third Modification including, but not limited to, attorneys' fees, title insurance premiums and recording fees.

9. Guarantors hereby renew, remake and affirm the representations and warranties contained in the Loan Documents. Borrower expressly agrees that Borrower is liable to pay all amounts outstanding on the Note as hereby revised.

10. Guarantors hereby agree that the Original Guaranties are replaced in their entirety by the Revised Guaranties. Guarantors hereby expressly acknowledge and confirm that by executing this Third 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.

11. 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 at 1832 W. Irving Park Road, Chicago, Illinois 60613, and to Guarantors at the

UNOFFICIAL COPY

addresses set forth in the Revised Guaranties, or at such addresses otherwise specified in the records of Lender. Borrower and Guarantors 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.

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

12. 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 Note as hereby revised, the Modification, the Second Modification, this Third Modification, the Mortgage, the Security Documents or the Real Estate, or any agreement executed or contemplated to be executed in conjunction herewith or any course of conduct or course of dealing in which Borrower, Guarantors and Lender are adverse parties. This provision is a material inducement for Lender in granting any financial accommodation to Borrower or Guarantors, or any of them.

13. Borrower and Guarantors warrant to Lender that neither Borrower nor Guarantors nor any affiliate is identified in any list of known or suspected terrorists published by any United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "Blocked Persons Lists") including, without limitation: (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

UNOFFICIAL COPY

Borrower and Guarantors covenant to Lender that if they become aware that they or any affiliate is identified on any Blocked Persons List, Borrower and Guarantors shall immediately notify Lender in writing of such information. Borrower and Guarantors further agree that in the event they or any affiliate is at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Lender to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, Lender may immediately contact the Office of Foreign Assets Control and any other government agency Lender deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Lender will forbear enforcement of its rights and remedies during such time as: (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List, and (2) Lender determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of Lender and encumbering, any part of the Premises (as defined in the Mortgage) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

UNOFFICIAL COPY

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

3/9, 2005.

LENDER:

The PrivateBank and Trust Company, an Illinois banking corporation

By: [Signature]
Its Associate Managing Director

BORROWER:

1346 West Henderson Street Corp., an Illinois corporation

By: [Signature]
Michael W. Collyer, President

GUARANTORS:

[Signature]
Michael W. Collyer, individually and as Trustee of the Michael W. Collyer Declaration of Trust dated May 3, 1999

[Signature]
Lisa S. Collyer, individually and as Trustee of the Lisa S. Collyer Declaration of Trust dated May 3, 1999

PATCH:

Patch Holdings, LLC, an Illinois limited liability company

By: [Signature]
Michael W. Collyer, Managing Member

Property of Cook County Clerk's Office

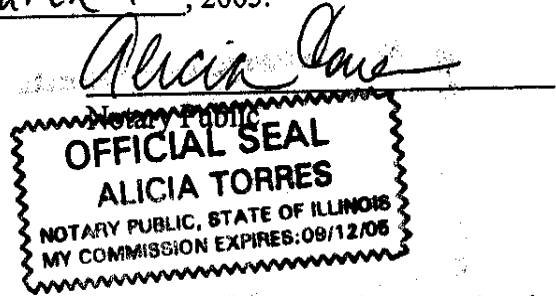
UNOFFICIAL COPY

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 Jane Frid, Associate Managing Director of The PrivateBank and Trust Company, an Illinois banking corporation, 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 March 9, 2005.

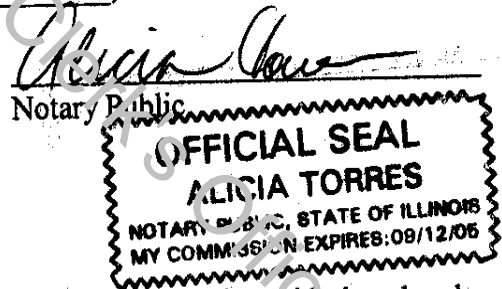
STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)



The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Michael W. Collyer, individually and as Trustee of the Michael W. Collyer Declaration of Trust dated May 3, 1999, 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.

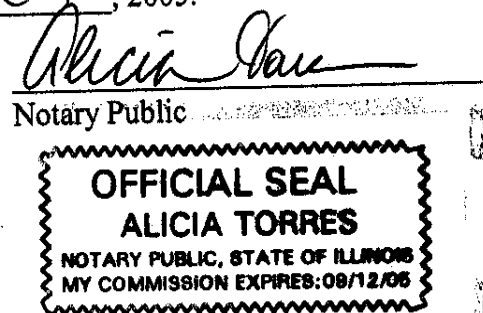
GIVEN under my hand and Notarial Seal March 9, 2005.

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 Lisa S. Collyer, individually and as Trustee of the Lisa S. Collyer Declaration of Trust dated May 3, 1999, 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 March 9, 2005.



UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Michael W. Collyer, President of 1346 West Henderson Street Corp., an Illinois corporation, 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, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal March 9, 2005.

Alicia Torres



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Michael W. Collyer, managing member of Patch Holdings, LLC, 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 limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal March 9, 2005.

Alicia Torres
Notary Public



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

THE EAST 31 FEET OF LOT 9 (EXCEPT THE NORTH 13.5 FEET THEREOF) AND THE EAST 31 FEET OF LOTS 10 AND 11 IN BLOCK 1 IN WILLIAM J. GOUDY'S SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

AN EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE WEST 4 FEET OF THE EAST 35 FEET OF THE SOUTH 36.25 FEET OF THE FOLLOWING DESCRIBED LOTS TAKEN AS A SINGLE TRACT: LOT 9 (EXCEPT THE NORTH 13.5 FEET THEREOF) AND LOTS 10 AND 11 IN BLOCK 1 IN WILLIAM J. GOUDY'S SUBDIVISION, AFORESAID, AS CREATED BY DEED RECORDED JULY 8, 1962 AS DOCUMENT 18845639.

P.I.N.:

14-20-318-043-0000

COMMONLY KNOWN AS:

1346 W. HENDERSON, CHICAGO, ILLINOIS