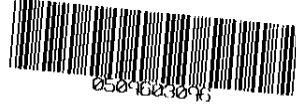


# UNOFFICIAL COPY

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



Doc#: 0509603096  
Eugene "Gene" Moore Fee: \$48.50  
Cook County Recorder of Deeds  
Date: 04/06/2005 12:47 PM Pg: 1 of 13

P.I.N.: 14-20-202-006, Vol. 484  
COMMONLY KNOWN AS: 933-935 W. Irving Park Road, Chicago, Illinois

## LOAN MODIFICATION AND ASSUMPTION AGREEMENT

This instrument is a Loan Modification and Assumption Agreement ("Modification") among The PrivateBank and Trust Company, an Illinois banking corporation ("Lender"), Patch Holdings, LLC, an Illinois limited liability company ("Patch"), 933 West Irving Corp., an Illinois corporation ("Borrower"), Michael W. 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. Patch holds fee simple title to certain real estate ("Real Estate") commonly known as 933-935 W. Irving Park Road, Chicago, Illinois, which is legally described on Exhibit A attached hereto.

B. On June 16, 2003, Patch executed and delivered to Lender a Promissory Note in the amount of \$661,000 ("Note"), which evidenced a loan in the amount of \$661,000 ("Loan"). To secure the Note, Patch and Guarantors executed and delivered to Lender the following documents ("Security Documents");

# UNOFFICIAL COPY

1. a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing ("Mortgage") executed by Patch covering the Real Estate, which Mortgage was recorded with the Cook County Recorder of Deeds on July 23, 2003 as Document No. 0320410024;

2. a UCC Financing Statement and UCC Authorization executed by Patch;

3. Guaranties of Note, Mortgage and Other Undertakings (2) executed by Guarantors; and

4. certain other loan documents as required by Lender.

C. 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. 0430341080.

D. The outstanding balance of the Note as of February 1, 2005 is \$417,171.25. 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.

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

1. The Note is replaced in its entirety by a Promissory Note in the amount of \$417,171.25. ("Revised Note"), a copy of which is attached hereto as Exhibit B. The Security Documents are hereby modified and amended to secure the Revised Note and all references to the Note in the Security Documents are modified and amended to refer to the Revised Note in place of the Note.

2. The Mortgage and other Security Documents are hereby modified and amended to replace all references to "Owner" or "Borrower" with 933 West Irving 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

# UNOFFICIAL COPY

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 Michael W. Collyer and/or 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 other way, and shall remain in full force and effect.

4. Borrower hereby agrees to pay to Lender the outstanding indebtedness of the Loan evidenced by the Revised Note and 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 Modification shall be effective upon Lender's receipt of this Modification executed by the parties hereto and the following documents and items:

- (a) the Revised Note;
- (b) Guaranties of Revised Note, Modification and Assumption Agreement, and Other Undertakings (2) of Guarantors (the "Revised Guaranties");
- (c) a UCC Financing Statement of Borrower;
- (d) a UCC Authorization executed by Borrower;
- (e) a date down endorsement to Lender's loan title insurance policy or endorsement which insures the Mortgage as modified by this 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;
- (f) a certified copy of any amendments to the trust agreement for the Michael W. Collyer Declaration of Trust dated May 3, 1999;
- (g) a certified copy of any amendments to the trust agreement for the Lisa S. Collyer Declaration of Trust dated May 3, 1999;

# UNOFFICIAL COPY

(h) a certified copy of the recorded Quitclaim Deed transferring title of the Real Estate from Patch to Borrower;

(i) organizational documents of Borrower, including Articles of Incorporation, By-Laws and a Corporate Resolution;

(j) updated certificates of insurance as required by Section 4 of the Mortgage; and

(k) a Loan Settlement Statement showing payment of Lender's expenses as described in Section 8 hereof.

6. The 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 or Revised Note ("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 Modification, the Security Documents, or the covenants, conditions and agreements therein contained or contained in the Note or Revised Note.

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 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.

# UNOFFICIAL COPY

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 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 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

# UNOFFICIAL COPY

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 Revised Note, the 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.

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

# UNOFFICIAL COPY

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.

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

3/9, 2005.

**LENDER:**

The PrivateBank and Trust Company, an Illinois banking corporation

By: [Signature]  
Associate Managing Director  
Its \_\_\_\_\_

**BORROWER:**

933 West Irving 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

# 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 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.

Alicia Torres  
Notary Public

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, 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.

Alicia Torres  
Notary Public

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )



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.

Alicia Torres  
Notary Public





# 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 933 West Irving 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  
Notary Public

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

Lot 2 in Block 1 in Aldrich's Subdivision in the West ½ of Block 2 in Laflin, Smith and Dyer's Subdivision in the North East ¼ (except 1.28 acres in the Northeast Corner) of Section 20, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

P.I.N.: 14-20-202-006, Vol 484  
COMMONLY KNOWN AS: 933-35 West Irving Park Road, Chicago, Illinois

Property of Cook County Clerk's Office

**UNOFFICIAL COPY****PROMISSORY NOTE**  
**("Revised Note")**

\$417,171.25

MARCH  
February 9, 2005

**FOR VALUE RECEIVED** the undersigned, 933 West Irving Corp., an Illinois corporation ("Borrower"), promises 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 Four Hundred Seventeen Thousand One Hundred Seventy-One and 25/100 (\$417,171.25) 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 will be adjusted from time to time as the rate of interest changes. Payments on account of this Note will be made as follows:

(a) On March 1, 2005, and continuing on the first day of each succeeding month to and including June 1, 2008, there shall be paid on account of this Note the amount of \$4,523.43 which amount shall be applied first to interest at a rate of five and five-eighths (5.625%) percent per annum and the balance to principal.

(b) On June 1, 2008 ("Maturity Date"), the principal balance together with all accrued interest and all other amounts due hereunder shall be paid.

Interest shall be calculated and paid on the basis of a calendar year having three hundred sixty (360) days and shall be paid for the actual days outstanding

This Note may be prepaid, in whole or in part, and all accrued interest hereon shall be payable and shall be paid on the date of prepayment.

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 Loan Modification Agreement executed concurrently herewith ("Modification"). This Note replaces that certain Promissory Note in the amount of

# UNOFFICIAL COPY

\$661,000 ("Original Note") made by Borrower on June 16, 2003. The Original Note is secured by a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing ("Mortgage") executed on June 16, 2003 and recorded on July 23, 2003 with the Cook County Recorder of Deeds as Document No. 0320410024. Amounts outstanding pursuant to the Original Note shall be outstanding under this Note. All interest rates applicable to and charged on the Original Note and all payments made on the Original Note are unchanged. Pursuant to the 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 in the payment of any installment of principal or interest or fifteen (15) days in the payment of interest or any other monies when due in accordance with the terms hereof or upon the occurrence of any "Event of Default" under the Mortgage or the Security Documents.

Under the provisions of the Mortgage and Security Documents the unpaid balance hereunder may, at the option of 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.

Borrower waives 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 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 Borrower, escrowees or otherwise for the benefit of Borrower shall, for all purposes, be deemed outstanding hereunder and received by Borrower 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 Borrower.

# UNOFFICIAL COPY

Borrower knowingly, voluntarily and intentionally waives irrevocably the right it 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, the Mortgage 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 Borrower are adverse parties. This provision is a material inducement for Holder in granting any financial accommodation to Borrower.

Borrower hereby irrevocably submits to the jurisdiction of any state or federal court sitting in Chicago, Illinois over any action or proceeding based hereon and Borrower hereby irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such state or federal court. Borrower hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. Borrower irrevocably consents 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 its address as specified in the records of Holder. Borrower agrees 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 agrees not to institute any legal action or proceeding against Holder 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 Holder to serve legal process in any other manner permitted by law or affect the right of Holder to bring any action or proceeding against Borrower or its property in the courts of any other jurisdictions.

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

933 West Irving Corp., an Illinois corporation

By: \_\_\_\_\_  
Michael W. Collyer, President