

# UNOFFICIAL COPY

This instrument prepared by  
and please return to:  
Polsinelli Shalton Flanigan Suelthaus, PC  
Jennifer L. Worstell, Esq.  
180 N. Stetson, Suite 4525  
Chicago, Illinois 60601



Doc#: 0722818105 Fee: \$40.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 08/18/2007 02:48 PM Pg: 1 of 9

COMMONLY KNOWN AS: 1459 S. Taylor, Chicago, Illinois  
Tax Key No.: 17-17-325-001-0000

## 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"), and Grace DeVito, Independent Administrator of the Estate of Anthony DeVito ("Borrower").

A. Anthony J. DeVito is the fee simple owner of the real estate commonly known as 1459 S. Taylor, Chicago, Illinois ("Real Estate"), which is legally described on Exhibit A attached hereto. The Real Estate is improved with four (4) residential apartment units and a Potbelly's Restaurant.

B. On April 14, 2006, Anthony J. DeVito executed and delivered to Lender a Promissory Note in the amount of \$150,000.00 ("Original Note"), which evidences a loan in the amount of \$150,000.00 ("Loan"). The proceeds of the Loan are being used for improvements to

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the Real Estate. To secure the Original Note, Anthony J. DeVito executed and delivered the following documents and items to Lender (collectively "Security Documents"):

1. a Mortgage covering the Real Estate ("Mortgage"), which was recorded with the Cook County Recorder of Deeds on June 4, 2006 as Document No. 0612447108;
2. a Assignment of Rents ("Assignment of Rents"), covering the Real Estate ("Mortgage") which was recorded with the Cook County Recorder of Deeds on June 4, 2006 as Document No. 0612447109; and
3. such other documents and items as were requested by Lender.

D. Anthony J. DeVito died on December 24, 2006. The death of a borrower is a default of the Mortgage, Note and Assignment of Rents. The Estate of Anthony J. DeVito (the "Estate") was opened on March 16, 2007 as Case No. 2007 P 001082 (the "Probate Proceeding") in the Cook County Probate Court. Grace DeVito, Anthony J. DeVito's sister, is the duly appointed Independent Administrator (the "Administrator") of the Estate. By reason of the death of Anthony J. DeVito, the Estate has succeeded to liability under the Original Note. The Administrator intends to continue to manage the Real Estate.

E. The Estate hereby acknowledges the default of Mortgage, Note and Assignment of Rents (collectively, with this Modification and the documents executed and delivered concurrently herewith to Lender the "Loan Documents") caused by the death of Anthony J. DeVito.

F. The outstanding principal balance of the Original Note is \$139,945.00. The Estate now requests Lender to: (1) waive the above-referenced default, (2) consent to replacing Anthony J. DeVito with the Estate as the borrower of the Loan, the maker of the Original Note

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and the mortgagor and assignor under the Mortgage and Assignment of Rents, respectively, and (3) extend the maturity date of the Original Note from April 1, 2007 to April 14, 2008. Lender is agreeable to these requests subject to the conditions and covenants set forth below.

**NOW, THEREFORE**, in consideration of good and valuable consideration, the receipt of which is hereby acknowledged the parties agree as follows:

1. Lender acknowledges and agrees that the Loan Documents are no longer in default because of the death of Anthony J. DeVito, and Lender acknowledges and consents to the Estate succeeding Anthony J. DeVito as the maker of the Original Note, the borrower of the Loan, and the mortgagor and assignor under the Mortgage and Assignment of Rents, respectively. As a condition to its granting such consent, Lender requires that the Estate retroactively assume, as of December 24, 2006, all of the obligations and liabilities of Anthony DeVito in and under the Note, Security Documents and Loan Documents. Notwithstanding the foregoing, Lender's consent and acknowledgement herein is not a consent to any future conveyance of the Real Estate or a waiver of any future defaults of the Loan.

2. The Original Note is hereby replaced in its entirety by a Promissory Note in the amount of \$150,000.00 ("Revised Note") executed by Borrower, 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 Original Note in the Security Documents are modified and amended to refer to the Revised Note in place thereof. All amounts presently outstanding on the Original Note shall be deemed outstanding on the Revised Note. All interest charged on and all payments made on the Original Note previously are unchanged.

3. Borrower hereby agrees to execute and deliver to Lender the following documents and items concurrently herewith:

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- (a) the Revised Note in the amount of \$150,000.00;
- (b) an Agreement to Provide Insurance for the Real Estate;
- (c) Disbursement Request and Authorization;
- (d) a date down endorsement to Lender's loan title insurance policy covering the Mortgage and showing Borrower as the successor fee simple interest holder of the Real Estate and the successor mortgagor under the Mortgage;
- (e) updated evidence of fire, casualty and comprehensive general public liability insurance covering the Real Estate;
- (f) a certified copy of the Death Certificate of Anthony J. DeVito;
- (g) a certified copy of the Last Will and Testament of Anthony J. DeVito, if any;
- (h) a certified copy of the Letters of Office for the Estate of Anthony DeVito;
- (i) the FEIN of the Estate of Anthony DeVito;
- (j) a Claim against the Estate of Anthony DeVito and, if required by the title company, an order authorizing the Administrator to execute this Modification and the documents listed in this Section 3 on behalf of the Estate;
- (k) a rent roll for the Real Estate;
- (l) a certification of no property manager for the Real Estate; and
- (m) a certified copy of the lease with Potbelly's and a Subordination, Non-Disturbance and Attornment Agreement (if required by Lender and not previously recorded).

4. Lender shall record this Modification forthwith. It is a condition precedent to this Modification being effective that it be recorded.

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5. This Modification shall constitute an amendment of the Security Documents and Loan Documents and wherever in said instruments or in any other instrument evidencing or securing the indebtedness evidenced by the Original Note or Revised Note 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 Loan Documents or the covenants, conditions and agreements therein contained.

6. In the event of any conflict between any of the provisions of the Loan Documents and this instrument, the provisions of this instrument shall control.

7. Borrower hereby renews, remakes and affirms the representations and warranties contained in the Loan Documents as of the execution hereof.

8. Borrower hereby agrees to pay to Lender all of Lender's expenses arising out of and in connection with this Modification including, but not limited to, recording fees and attorneys' fees performed in the preparation of necessary documentation.

9. BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES IRREVOCABLY THE RIGHT SHE MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE LOAN DOCUMENTS, OR ANY OF THE DOCUMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH LENDER AND BORROWER ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER.

10. BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED

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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 SHE 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 HER ADDRESS AS SPECIFIED IN THE RECORDS OF LENDER. 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 LENDER OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREINABOVE 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 HER PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.

11. Borrower warrants to Lender that neither Borrower 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.

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Borrower covenants to Lender that if she becomes aware that she or any affiliate is identified on any Blocked Persons List, Borrower shall immediately notify Lender in writing of such information. Borrower further agrees that in the event she 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 Real Property, Personal Property or Rents (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 June 27, 2007, to be effective as of April 14, 2007.

**LENDER:**

The PrivateBank and Trust Company, an Illinois banking corporation

By: [Signature]  
Its MANAGING DIRECTOR

**BORROWER:**

The Estate of Anthony DeVito, Case No. 2007 P 001082

By: [Signature]  
Grace DeVito, Independent Administrator

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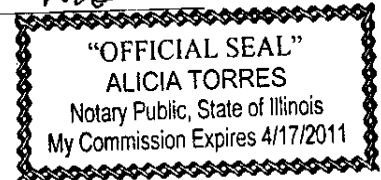
STATE OF ILLINOIS )  
                                  )     SS  
                                  )     Will  
COUNTY OF COOK )

Alicia Torres, a Notary Public in and for the State and County aforesaid, does hereby certify that James Wagner, 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 he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the purposes therein set forth.

GIVEN under my hand and Notarial Seal July 3, 2007

Alicia Torres  
Notary Public

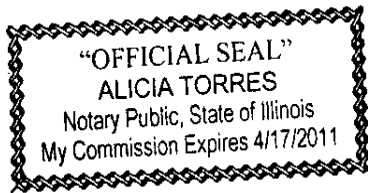
STATE OF ILLINOIS )  
                                  )     SS  
                                  )     Will  
COUNTY OF COOK )



The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Grace DeVito, Independent Administrator of the Estate of Anthony DeVito, 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 and as the free and voluntary act of said Estate, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal July 3, 2007.

Alicia Torres  
Notary Public



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## EXHIBIT A LEGAL DESCRIPTION

THE WEST 5 FEET OF LOT 19 AND ALL OF LOT 20 IN BLOCK 48 IN CANAL TRUSTEES' SUBDIVISION OF THE WEST ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 1459 W. Taylor Street, Chicago, Illinois  
P.I.N.: 17-17-325-001-0000

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