

UNOFFICIAL COPY

08012583

2851/0135 66 001 Page 1 of 8
1998-11-10 11:29:08
Cook County Recorder 35.50



08012583

Prep By +
After recording, mail to
The First National Bank of Chicago
1048 Lake Street
Oak Park, IL 60301
Attn: Commercial Real Estate
C. Metzger



LOAN MODIFICATION AGREEMENT

October 7, 1998

8

WHEREAS, Jack P. Muscia and Pamela M. Muscia and American National Bank and Trust Company of Chicago, not personally but as Trustee under a Trust Agreement dated June 17, 1994 and known as Trust No. 300016-06, (the "Borrower"), jointly and severally if more than one, is justly indebted to THE FIRST NATIONAL BANK OF CHICAGO ("Lender"), having its principal office in Chicago, Illinois, under its Loan No. 8773399813-34, originally in the sum of Two Hundred Twenty Thousand and 00/100 Dollars (\$220,000.00) as established by a certain Promissory Note made by Jack P. Muscia and Pamela M. Muscia dated July 5, 1994 and any extensions, amendments, and modifications, thereof, (the "Note"). The Note is secured by a certain Mortgage, and a certain Assignment of Leases and Rents, both dated July 5, 1994, and recorded in the Cook County Recorder's Office on July 22, 1994 as Document Nos. 94641640 and 94641641, ("Security Documents"); against the property legally described as follows;

LOTS 24 AND 25 AND THE NORTHWESTERLY 18.33 FEET OF LOT 26 IN BLOCK 3 IN EDISON PARK, A SUBDIVISION IN SECTION 36, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 6697-99 N. OLMSTED/6677-79 W. OLIPHANT AVENUE, CHICAGO, ILLINOIS

P.I.N.: # 09-36-416-028

REI TITLE SERVICES # 1646790

and hereby referred to as part of this Agreement, and;

WHEREAS, the Borrower, does hereby request this Loan Modification Agreement.

NOW, THEREFORE, it is hereby agreed by the parties hereto that the Note is hereby modified and amended in its entirety by the Term Loan Note of even date herewith in the amount of \$206,882.25 ("Revised Note"), and any and all extensions, modifications, and amendments thereof, a copy of which is attached hereto as Exhibit A. The undersigned hereby promises to pay the indebtedness with interest at the rate in accordance with the terms provided in the Revised Note. The Mortgage and all security documents ("Security Documents") are hereby modified and amended to secure the Revised Note and any extensions, renewals, or

UNOFFICIAL COPY

08C12583

modifications thereof. All references to the Note in the Security Documents are modified and amended to refer to the Revised Note in place of the Note.

In all other respects said Mortgage and Security Documents shall remain in full force and effect and the undersigned, his or their heirs, assigns and representatives, shall be obligated to pay the same.

LENDER:

THE FIRST NATIONAL BANK OF CHICAGO

By: *Joseph P. Sceluto*
Its: *Vice President*

BORROWER:

American National Bank and Trust
Company of Chicago, as Trustee as
Aforesaid

By: *Margaret O'Donnell*
Its: *Trust Administrator*

Jack P. Muscia
Jack P. Muscia

Pamela M. Muscia
Pamela M. Muscia

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

County Clerk's Office

UNOFFICIAL COPY

08012583

STATE OF ILLINOIS)
) ss.
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said county and state, DO HEREBY CERTIFY Margaret A. Donnell of the American National Bank and Trust Company of Chicago as Trustee as aforesaid (the "Trustee"), personally known to me to be the same persons whose name is subscribed to the foregoing instrument as such J. Administrator appeared before me this day in person, and acknowledged that she signed and delivered the said instrument as her free and voluntary act and the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 5th day of Nov, 1998.
My Commission Expires:

Notary Public
Mary C. Trimarco



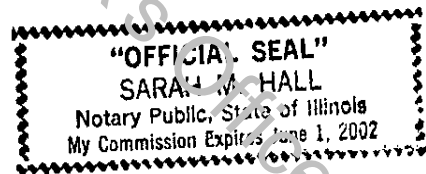
ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Jack P. Muscia, 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 this 2nd day of November, 1998.

NOTARY PUBLIC Sarah M. Hall
My Commission expires: June 1, 2002



ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Pamela M. Muscia, 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 this 2nd day of November, 1998.

NOTARY PUBLIC Sarah M. Hall
My Commission expires: June 1, 2002



STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said county and state, DO HEREBY CERTIFY that Tarjet R. Sienko, of THE FIRST NATIONAL BANK OF CHICAGO (the "Bank"), a national banking association, personally known to me to be the same person(s) whose name(s) is subscribed as the Vice President of the Bank to the foregoing instrument, appeared before me this day in person, and acknowledged that she signed and delivered the said instrument as her free and voluntary act, and the free and voluntary act of the Bank, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 5th day of November, 1998.
My Commission Expires:

Notary Public

Charmaine E. Metzger

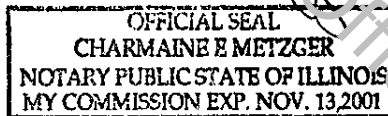


EXHIBIT A
TERM LOAN NOTE
(5-YEAR Fixed Rate)

\$206,882.25

October 7, 1998

FOR VALUE RECEIVED, Jack P. Muscia and Pamela M. Muscia and American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated June 17, 1994 and known as Trust No. 300016-06, (the "Trustee") jointly and severally, if more than one, (the "Borrower") promises to pay to the order of The First National Bank of Chicago (the "Bank"), the principal sum of Two Hundred Six Thousand Eight Hundred Eighty Two and 25/100 Dollars (\$206,882.25) payable at its office in Chicago, Illinois in lawful money of the United States bearing interest from time to time as hereunder provided. Monthly payments on account of this Note shall be made in equal monthly installments representing principal and interest as provided below and shall be applied first to interest with the balance to principal.

Monthly payments on account of this Note are to be made in such amounts as are appropriate to amortize the original principal balance, by the level rate amortization method, over a term of 250 months. Payments on account of this Note shall be made as follows:

(a) On November 1, 1998 and on the first day of each month thereafter to and including September 1, 2003, there shall be paid \$1,606.21 which shall be applied first to interest at the rate of 7.25% per annum and the balance to principal.

(b) On October 1, 2003 ("Maturity Date"), the principal balance together with all accrued interest and all other amounts due hereunder shall be paid.

All interest on this promissory note shall be calculated on the basis of a 360-day year and shall be charged for the actual number of days elapsed. The Borrower shall have the right from time to time upon 2 days' notice in writing to the Bank to prepay the unpaid balance of this note or in the inverse order of the maturity thereof any installment or installments due hereunder, prior to the expressed maturity thereof by paying, in addition to the principal amount of such prepayment, the interest accrued on the amount prepaid, and the applicable Prepayment Premium. Prepayments shall not affect the duty of Borrower to pay all installments when due or change the amount of such installments and shall not affect or impair the right of Bank to pursue all remedies available to Bank under this Note. The Prepayment Premium shall apply to any payments, voluntary or involuntary, including those made after acceleration of maturity of the Note.

"Prepayment Premium" means an amount equal to Four (4%) percent of the amount prepaid during year One; Three (3%) percent of the amount prepaid during year Two; Two (2%) percent of the amount prepaid during year Three; and One (1%) percent of the amount prepaid during year Four.

After maturity or upon an event of default, interest shall accrue at the rate of 3.0% per annum in excess of the rate which would have been in effect according to the terms of this Note, until fully paid. Interest shall be computed on the basis of a 360 day year and charged for the actual number of days elapsed. The Borrower agrees to pay reasonable attorneys' fees, costs and expenses incurred by the Bank in the collection and enforcement of this Note.

Without limiting the provisions of the succeeding paragraphs, in the event any payment of principal and interest is not paid within ten (10) days after the date the same is due, the undersigned promises to pay a "Late Charge" of five (5%) percent of the amount so overdue to defray the expense incident to handling any such delinquent payment or payments.

This Note and any renewals and extensions hereof and any other liabilities and obligations of the undersigned to the Bank are secured pursuant to the below described agreements as each such agreement may be amended, modified or restated from time to time hereafter.

A certain Mortgage, made by American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated June 17, 1994 and known as Trust No. 300016-06, and a certain Assignment of Leases and Rents made by Borrower to Bank both dated July 5, 1994, and recorded in the Cook County Recorders Office on July 22, 1994 as Document Nos. 94641640 and 94641641, respectively, and as modified by a certain Loan Modification Agreement of even date

and not yet recorded, on real estate located at 6697-99 N. Olmsted / 6677-79 W. Oliphant Avenue, Chicago, Cook County, Illinois; and any and all other agreements whether now or hereafter entered into between the undersigned and the Bank. All of the terms and conditions of said agreements are incorporated herein and made a part hereof.

In consideration of the granting of the loan evidenced by this promissory note, the Borrower hereby agrees as follows:

1. Representations and Warranties. The Borrower represents and warrants that (a) all financial statements and other information heretofore furnished to the Bank are true and correct and fairly reflect the financial condition of the Borrower at the dates thereof, including contingent liabilities of every type, which financial condition has not changed materially and adversely since such dates; (b) neither the making of this note nor the performance by the Borrower of the obligations hereunder will violate any provision of law or any agreement, indenture, note or other instrument binding upon the Borrower or give cause for acceleration of any indebtedness of the Borrower; (c) no agreement, indenture, note or other instrument binding upon the Borrower contains any provision prohibiting the creation of a mortgage, pledge, lien, security interest or any other encumbrance upon any of the assets of the Borrower; (d) all authority from or approval by any governmental body, commission or agency, State or Federal, requisite to the making or validity of this note has been obtained; (e) the Borrower has filed all United States federal tax returns and all other tax returns which are required to be filed and has paid all taxes due pursuant to said returns or pursuant to any assessment received by the Borrower, and no tax liens have been filed and no claims are being asserted with respect to any such taxes, (f) there is no litigation or proceeding pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower which might materially adversely affect the financial condition of the Borrower or the ability of the Borrower to perform its obligations under this note; (g) this loan is made solely to acquire or carry on a business or commercial enterprise of Borrower; and (h) margin stock (as defined in Regulation U) constitutes less than 25% of those assets of the Borrower which are subject to any limitation on sale, pledge, or other restriction hereunder.

2. Affirmative Covenants. The Borrower will (a) duly pay and discharge all taxes or other claims which might become a lien upon any of the property owned by Borrower, except to the extent that such items are being appropriately contested in good faith and an adequate reserve for payment thereof is being maintained; (b) carry on and conduct the Borrower's business in substantially the same manner and in substantially the same fields as such business is now and has heretofore been carried on and conducted; (c) comply with all applicable statutes, rules and regulations; (d) pay all Federal or State stamp or issuance taxes, if any, payable or ruled to be payable by reason of the execution, delivery or issuance hereof under any now existing or hereafter enacted Federal or State statute and the Borrower will at all times indemnify and hold harmless the Bank against any liability in respect thereof; (e) furnish such financial statements to the Bank as it may from time to time reasonably request; and (f) use the proceeds of the loan evidenced by this note for business purposes and in this connection the Borrower warrants that no part of the proceeds of this note will be used directly or indirectly for the purpose of purchasing or carrying any stock in violation of any of the provisions of Regulation U of the Board of Governors of the Federal Reserve System.

3. Defaults. This note and all installments hereof shall, at the option of the Bank (and automatically in the case of clause (e) below), immediately mature and become due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, upon the occurrence of any one or more of the following events:

- (a) Any representation or warranty in connection with this note shall be materially false as of the date on which made.
- (b) Any installment of interest or principal of this note shall not be paid when due.
- (c) The Borrower shall fail to comply with any provision of Paragraph 2 hereof, which failure is not remedied within 10 days after receipt of written notice from the Bank.
- (d) Any individual guarantor of the indebtedness represented hereby shall die or any corporate guarantor shall fail to maintain its corporate existence.
- (e) The Borrower or any guarantor of the indebtedness represented hereby shall have an order for relief entered with respect to it under the Federal Bankruptcy Code similar state law or be adjudicated a bankrupt or an insolvent,

or admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of its creditors; or the Borrower or any such guarantor shall apply for or consent to the appointment of any receiver, trustee, or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of the Borrower or any such guarantor, as the case may be, and such appointment shall continue undischarged for a period of 60 days; or the Borrower or any such guarantor shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against the Borrower or any such guarantor and shall remain undischarged for a period of 60 days; or the Borrower or any such guarantor shall fail to pay or otherwise discharge any one or more judgments or attachments against any one or more of them.

4. Setoff. Any indebtedness due from the legal holder hereof to the Borrower may be appropriated and applied hereon after any expressed or accelerated maturity hereof.

5. Amendments, Remedies, etc. No delay or omission of the Bank to exercise any right or power hereunder shall impair such right or power or be a waiver of any default or an acquiescence therein; and any single or partial exercise of any such right or power shall not preclude other or further exercise thereof or the exercise of any other right; and no waiver shall be valid unless in writing signed by the Bank, and then only to the extent in such writing specifically set forth. All remedies hereunder or by law afforded shall be cumulative and all shall be available to the Bank until it and other liabilities of the Borrower have been paid in full in lawful money.

6. Miscellaneous. This note shall be binding upon the Borrower and inure to the benefit of the holder, from time to time, of this note, and its or their respective heirs, personal representatives, successors and assigns. This note is accepted in Chicago, Illinois and shall be governed by the internal laws (and not the law of conflicts) of the State of Illinois, giving effect, however, to federal laws applicable to national banks.

The Bank may transfer this Note to any assignee, and in that event, the "Bank" will refer to the assignee, but the term "endorser" as used herein does not refer to the Bank.

If any part of this Note shall be adjudged invalid or unenforceable, then such partial invalidity or unenforceability shall not cause the remainder of the Note to be or to become invalid or unenforceable, and if any provision hereof is held invalid or unenforceable in one or more of its applications, the parties hereto agree that said provision shall remain in effect in all valid or enforceable applications that are severable from the invalid or unenforceable application or applications.

The use of the singular herein may also refer to the plural, and vice-versa, and the uses of the neuter or any gender shall be applicable to any other gender or neuter.

Each Borrower, endorser and guarantor waives presentment, demand, notice of dishonor, protest and all other notices and demands in connection with the enforcement of the Bank's rights hereunder, and hereby consents to, and waives notice of: (i) any renewals, extensions and modifications hereof and (ii) the release with or without consideration of any of the Borrower, any guarantor or any collateral. Any failure of the Bank to exercise any right available hereunder or otherwise shall not be construed as a waiver of the right to exercise the same or any other rights at any other time. No waiver by the Bank of any default shall be effective unless made in writing nor operate as a waiver of any other or future default. The validity and construction of this Note shall be governed by the internal law (and not the law of conflicts) of the State of Illinois. The Borrower hereby irrevocably submits to the non-exclusive jurisdiction of any United States federal or Illinois state court sitting in Chicago in any action arising out of or relating to this Note and the Borrower hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such court.

UNOFFICIAL COPY

08012583

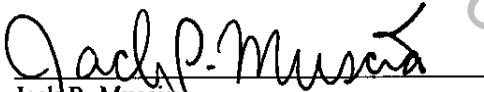
The Borrower (jointly and severally if more than one) hereby irrevocably authorizes any attorney of any court of record to appear for any one or more of them, or all of them, in such court at any time after this Note becomes due, whether by acceleration or otherwise and confess a judgment without process in favor of the Bank or any other holder of this Note for the amount then due hereon, together with costs of collection and reasonable attorneys' fees, and to release and waive all errors that may intervene and consent to immediate execution upon such judgment, hereby ratifying and confirming all that said attorney may do by virtue hereof. **THE BORROWER HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY ACTION ARISING HEREUNDER.**

This Note evidences the indebtedness previously evidenced by that certain Promissory Note dated July 5, 1994, in the original principal amount of \$220,000.00 made by Jack P. Muscia and Pamela M. Muscia payable to the Bank and any extensions, modifications or renewals thereof, (the "Prior Note") and is not a repayment or novation of the Prior Note.

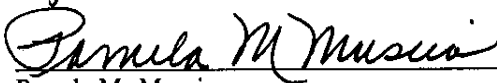
IN WITNESS WHEREOF, the Borrower has executed this Note on the date first set forth above.

American National Bank and Trust Company
of Chicago, as Trustee as Aforesaid,

By: _____
Its: _____



Jack P. Muscia



Pamela M. Muscia