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98994235

MODIFICATION AGREEMENT

Document Number:

98994235

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. COOK COUNTY RECORDER

Parcel Identification Numbers: 07-06-101-010 Vol. 187

MODIFICATION AGREEMENT

THIS AGREEMENT is made as of the 8th day of October, 1998, by and between HOFFMAN NORTHWEST, A WISCONSIN LIMITED PARTNERSHIP (the "Borrower"), and U.S. BANK NATIONAL ASSOCIATION f/k/a First Bank (N.A.) (the "Bank").

RECITALS:

i. Borrower is presently indebted to Bank with respect to a loan made by Bank to Borrower in the original principal amount of \$2,400,000.00 (the "Loan"), the outstanding balance of which Loan is presently evidenced by a Mortgage Note dated as of October 8, 1993, in the principal amount of \$2,400,000.00 ("the Note"). As of the date hereof, the outstanding principal balance of the Note is approximately \$1,915,000.00.

ii. Repayment of the indebtedness evidenced by the Note is secured, inter alia, by a Real Estate Mortgage ("Mortgage") dated as of October 8, 1993, on the real estate described in Exhibit A attached hereto (the "Property"), and which Mortgage was recorded in the office of the Register of Deeds for Cook County, Illinois, on October 28, 1993, as Document No. 93870456.

iii. Repayment of the indebtedness evidenced by the Note is further secured, inter alia, by a Chattel Security Agreement (the "Security Agreement") dated October 8, 1993, executed by Borrower and covering certain property of Borrower as described therein.

iv. In this Agreement the Mortgage and the Security Agreement will collectively be referred to as the "Security Documents".

v. Borrower has requested that the maturity date for repayment of the indebtedness evidenced by the Note be extended from October 8, 1998, to October 8, 2008, and that the Bank make an additional loan to Borrower in an amount which when added to

BOX 333-CTI

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the outstanding principal balance of the Loan shall result in an outstanding principal indebtedness equal to the sum of \$2,600,000.00.

vi. The Bank is willing to agree to such requests but only on the terms and conditions hereinafter set forth and in reliance on the warranties and representations of Borrower contained herein.

AGREEMENTS:

NOW, THEREFORE, in consideration of the matters stated in the foregoing Recitals, the representations and warranties of Borrower herein contained, and the covenants hereinafter set forth, the parties hereto agree as follows:

1. To induce Bank to enter into this Agreement, Borrower warrants and represents to Bank as follows:

A. The Recitals set forth above are each true and correct.

B. The Note and Security Documents referred to in the Recitals are the valid, binding and enforceable agreements of Borrower.

C. Borrower has no present defenses, set-offs, claims or rights of recoupment against its obligation to pay to Bank the outstanding balance of the Loan as evidenced by the Note referred to in the Recitals

2. The Bank agrees to loan to Borrower an amount (the "New Loan") which when added to the outstanding principal balance of the Loan as of the date hereof shall result in an outstanding principal indebtedness equal to the sum of \$2,600,000.00 on the terms and conditions set forth below.

3. Repayment of the outstanding balance of the Loan and the proceeds of the New Loan shall be evidenced by and shall be on the terms and conditions contained in the Mortgage Note (the "New Note") executed and delivered by Borrower to Bank contemporaneously with its execution and delivery of this Agreement.

4. Repayment of the entire indebtedness evidenced by the New Note, and any renewals or extensions thereof, shall be and is secured by each of the Security Documents. The term "Obligations" as used in the Mortgage and Security Agreement shall include all of the indebtedness as evidenced by the New Note and any renewals, modifications or extensions thereof. The term "Note" as used in the Mortgage shall mean the New Note executed by Borrower pursuant hereto. The indebtedness evidenced by the New Note shall be deemed to be a loan by the Bank pursuant to the commitment letter from Bank to The Marcus Corporation

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dated January 27, 1998.

5. Notwithstanding anything contained herein to the contrary, the Bank shall have no obligation to disburse the proceeds of the New Loan unless and until Borrower shall deliver to Bank all of the following documents:

A. An endorsement to the Loan Policy of Title Insurance issued to Bank by Chicago Title Insurance Company, No. 1401 007463754 D1, extending the effective date of such Policy through the date of recording of this Agreement, increasing the amount of insurance to \$2,600,000.00, and showing title to be unchanged and without exception for any liens or encumbrances except in favor of Bank.

B. The written guaranty of the New Note by The Marcus Corporation (the "Guarantor"), in form and substance similar to its prior guaranty of the Loan.

C. An opinion in writing from Borrower's legal counsel, which counsel must be approved by Bank, dated at the closing date, to the effect that (i) Borrower is a limited partnership duly organized under the laws of the State of Wisconsin and (ii) the execution of this Agreement and the execution and delivery of the New Note pursuant hereto have been authorized in accordance with the partnership agreement of Borrower and when executed by the general partners of Borrower designated in such opinion shall be the valid and binding obligations of Borrower and will not violate any laws or agreements to which Borrower is subject. Such opinion may contain such common exceptions as are acceptable to the Bank's legal counsel.

D. Certified resolutions of Guarantor's board of directors authorizing the execution and delivery of the guaranty to be executed by Guarantor pursuant hereto.

E. An opinion in writing from Guarantor's legal counsel, which counsel must be approved by Bank, dated at the closing date, to the effect that (i) Guarantor is a corporation duly organized under the laws of the State of Wisconsin and (ii) the execution and delivery of the guaranty to be executed by Guarantor pursuant hereto have been authorized in accordance with the articles and by-laws of Guarantor and when executed by the officers of Guarantor designated in such opinion such guaranty shall be the valid and binding obligation of Guarantor and will not violate any laws or agreements to which Guarantor is subject. Such opinion may contain such common exceptions as are acceptable to the Bank's legal counsel.

6. Borrower shall, upon demand by Bank, reimburse Bank for all costs and expenses incurred by Bank in connection with this transaction, including, but not limited to, the fees of Bank's

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attorneys.

7. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, heirs and personal representatives.

Executed as of the date first above written.

U.S. BANK NATIONAL ASSOCIATION

By: 

Patrick J. Mulcahy
Vice President

HOFFMAN NORTHWEST, A WISCONSIN
LIMITED PARTNERSHIP

By: Baymont Partners, Inc., a
general partner

by: 

Stephen Marcus
President

attest: 

Thomas F. Kissinger
Secretary

By: 

David M. Lowe, a general partner

By: 

Stephen W. Porter, a general
partner

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ACKNOWLEDGMENTS

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

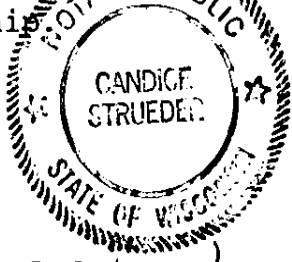
The foregoing instrument was acknowledged before me this day of October, 1998, by Patrick J. Mulcahy, Vice President of U.S. Bank National Association.

Randa M. Chalstrom

Notary Public
State of Wisconsin, Milwaukee County
My Commission Expires: 8-25-98

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

29th The foregoing instrument was acknowledged before me this day of October, 1998, by Stephen Marcus, President and Thomas F. Kissinger, Secretary of Baymont Partners, Inc., a general partner of Hoffman Northwest, a Wisconsin Limited Partnership.



Candice Strueder

Notary Public
State of Wisconsin, Milwaukee County
My Commission Expires: May 5, 2002

~~STATE OF~~)
District of Columbia) ss.
~~COUNTY OF~~)

The foregoing instrument was acknowledged before me this day of October, 1998, by Stephen W. Porter, a general partner of Hoffman Northwest, a Wisconsin Limited Partnership.

Jean A. Jantz
Notary Public
State of District of Columbia, County of
My Commission Expires:



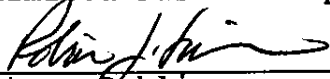
JEAN A. JANTZ, NOTARY
My Commission Expires September 30, 2001

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STATE OF Wisconsin)
) ss.
COUNTY OF Ozaukee)

The foregoing instrument was acknowledged before me this 21st day of October, 1998, by David M. Lowe, a general partner of Hoffman Northwest, a Wisconsin Limited Partnership.



Notary Public
State of Wisconsin, County of Ozaukee
My Commission Expires is permanent



This document was drafted by:
Ronald S. Jacobs, Attorney at Law

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EXHIBIT A

PROPERTY DESCRIPTION

(P.I.N. No. 07-06-101-0000, Vol. 187)

LOT 1 IN HOFFMAN NORTHWEST SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPTING THEREFROM THAT PART OF LOT 1 DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 1 THENCE NORTH 29 DEGREES 45 MINUTES 10 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT, 230.00 FEET; THENCE NORTH 00 DEGREES 14 MINUTES 50 SECONDS WEST, 181.00 FEET; THENCE SOUTH 89 DEGREES 45 MINUTES 10 SECONDS WEST 230.00 FEET; THENCE SOUTH 00 DEGREES 14 MINUTES 50 SECONDS EAST, 181.00 FEET TO THE PLACE OF BEGINNING.

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