

UNOFFICIAL COPY 99555679

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1999-06-10 13:08:11  
Cook County Recorder 47.00

This instrument was prepared by, and after recordation should be returned to,  
**CORUS BANK, N.A.**  
3959 N. Lincoln Avenue  
Chicago, IL 60613  
Attn: Peter R. Freund, Vice President



99555679

**MORTGAGE AND LOAN AGREEMENT  
MODIFICATION AGREEMENT**

99-0465 GWT

This Mortgage and Loan Agreement Modification Agreement made this 3 day of June, 1999 (the "Modification Agreement" or "Agreement"), by and between LEE N. POLITE, ANTIGONE POLITE, KONSTANTINOS CHANIOTAKIS, KIKI CHANIOTAKIS (collectively, the "Beneficiaries") and BANCO POPULAR, ILLINOIS, f/k/a Pioneer Bank and Trust Company, not personally, but as Trustee under Trust Agreement dated June 6, 1996, and known as Trust No. 26116 (the "Trust", and together with the Beneficiaries, the "Borrower"), and **CORUS BANK, N.A.** (the "Lender").

WHEREAS, the Lender is the owner and holder of a certain Promissory Note dated May 27, 1997, in the original principal sum of Five Hundred Forty-Three Thousand Seven Hundred Fifty and No/100 Dollars (\$543,750.00), as amended by the Note Modification Agreement between Borrower, George Haldes and Sharon Haldes (the "Haldes") and Lender dated June 1, 1998, and the Second Note Modification Agreement between Borrower, the Haldes and Lender

Box 231

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dated August 1, 1998 (as amended, the "Original Note"), from Borrower and the Haldes payable to the order of Lender; and

WHEREAS, contemporaneous herewith, the Original Note has been amended and restated by that certain Amended and Restated Promissory Note in the principal amount of \$585,000.00 from the Borrower (as amended and restated, the "New Note"; the funds disbursed under the New Note shall be referred to herein as the "Loan"); and

WHEREAS, contemporaneous with the execution of the Original Note, as security for the Original Note, the Trust executed a Construction Mortgage on the real property described in **Exhibit "A"** hereto (the "Premises") to Lender, dated May 27, 1997, and recorded on June 18, 1997, as Document No. 97-434577 in the Cook County Recorder's Office and an Assignment of Leases and Rents on the Premises from the Borrower to Lender, dated May 27, 1997, and recorded on June 18, 1997, as Document No. 97-434578 in the Cook County Recorder's Office (collectively, the "Mortgage"); and

WHEREAS, contemporaneous with the execution of the Original Note and Mortgage, Borrower and Lender executed a Construction Loan Agreement (the "Loan Agreement"; together with the New Note and Mortgage, and certain other documents executed contemporaneously with the Loan Agreement and Mortgage, hereinafter referred to as the "Loan Documents"), which document provides, among other things, for the terms and conditions by which the Loan shall be disbursed and repaid; and

WHEREAS, contemporaneous with the execution and delivery of this Modification, Borrower is required to make a principal reduction payment to Lender in the amount of \$50,000.00 (the "Principal Reduction Payment"); and

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WHEREAS, the New Note shall be due and payable on June 1, 2000 (the "Maturity Date"), and, after the Principal Reduction Payment, has a present outstanding principal balance of \$309,900.00; and

WHEREAS, Maker (as such term is defined and used in the New Note), under the terms of the New Note, is required to pay on the first day of each month to the order of the Lender interest on the unpaid balance thereof until the Maturity Date, at which time all outstanding principal, accrued and unpaid interest, fees and costs due to Lender shall be due and payable; and

WHEREAS, by the execution of the New Note and this Modification Agreement, the Borrower and Lender have agreed to, among other things, and subject to Lender's receipt of the Principal Reduction Payment, increase the principal amount of the Loan (as defined in the Loan Agreement), extend the Maturity Date of the Loan, revise the Project Budget (as hereinafter defined and as set forth in Schedule I of the Loan Agreement), and amend the Mortgage to secure the New Note and Loan Agreement;

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, receipt of which is hereby acknowledged, and in further consideration of the mutual promises contained herein, Borrower and Lender agree as follows:

1. Pursuant to the New Note, the maximum aggregate principal amount to be advanced under the Loan pursuant to the Loan Agreement is hereby increased by \$41,250.00 from \$543,750.00 to \$585,000.00. After the Principal Reduction Payment, the remaining Loan proceeds available to be drawn upon under, and subject to, the terms of the Loan Agreement, as hereby amended, shall be \$275,100.00. All references to the "Loan" and/or "Note" contained in

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the Mortgage, Loan Agreement and/or any of the other Loan Documents shall be deemed to refer to the Loan (as defined herein) and the New Note, respectively.

2. Lender hereby consents to the revised project budget (sometimes referred to herein and in the Loan Agreement as the "Project Budget"), a copy of which is attached hereto as **Exhibit "B"** and made a part hereof. The revised Project Budget shall hereby be attached to and made a part of the Loan Agreement.

3. Notwithstanding anything contained in the Loan Agreement or any of the other Loan Agreements to the contrary, no further disbursements of Loan proceeds may be drawn on by the Borrower prior to the Circuit Court of Cook County, Illinois Municipal Department, First District, entering an agreed order in Case Number 93 M1 403414 ("Municipal Case"), acceptable to Lender in its sole discretion. The agreed order shall provide, among other things, that Borrower shall correct all matters cited in the Municipal Case by the City of Chicago as violating the Municipal Code of the City of Chicago no later than June 28, 1999. The Municipal Case must be dismissed without leave to reinstate by the City of Chicago, and no other code violations shall be outstanding against the Premises as of June 28, 1999. Borrower's failure to comply with this Paragraph shall be an Event of Default under the Loan Agreement and the New Note.

4. Section 4C of the Loan Agreement is hereby deleted and the following is substituted therefor:

**Plans and Specifications.** Borrower shall cause the architect for the Project to prepare working drawings, plans and specifications for the construction of the Project ("**Preliminary Plans**"). Borrower shall cause the contractor to prepare a construction schedule (the "**Construction Schedule**"). Borrower has submitted the Preliminary Plans and the Construction Schedule to Lender for review and approval by Lender and the Inspector (as hereinafter defined). Lender's approval of the Preliminary Plans and the Construction

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Schedule may be withheld in Lender's sole discretion. The working drawings, plans and specifications, design specifications and construction schedule as approved by Lender, in Lender's sole discretion, are collectively referred to herein as the "**plans and specifications**". No material changes shall be made to the plans and specifications, without Lender's prior written consent. Notwithstanding anything contained herein: (i) nothing herein shall be deemed to prohibit Lender from making any additional advance of Loan proceeds, (ii) no such advance, if made by Lender, shall be deemed to be a waiver of any requirement herein, and (iii) no such advance, if made by Lender, shall be deemed to require Lender to make any additional advance of Loan proceeds.

5. Section 5 of the Loan Agreement is hereby deleted and the following is substituted therefor:

**Balancing Requirement.** The Loan shall be deemed to be "Out of Balance" if (at any time during the term hereof) Lender determines, in Lender's sole, but reasonable discretion, that the remaining amount available under the Loan is not or will not be sufficient to complete the Project in accordance with the plans and specifications, as approved by the Lender, pay interest on the Loan through completion of the Project, and to pay all costs and expenses set forth in the Project Budget, plus such additional amounts as Lender, in its sole and exclusive discretion deems necessary or reasonable to complete the Project, pay all liabilities and perform all obligations of Borrower hereunder. In the event Lender determines that the Loan is Out of Balance, then within ten (10) days after written notice thereof from Lender to Borrower, Borrower shall deposit with Lender funds equal to the amount that Lender estimates that the Loan is or will be Out of Balance. Borrower's failure to deposit funds as aforesaid shall be considered a default hereunder. The funds deposited by Borrower with Lender will be disbursed by Lender under the Loan through the construction escrow prior to any further disbursements of the Loan proceeds. Any such amounts deposited with Lender shall be added to and made a part of the equity of Borrower in the Project, and no interest shall be paid to Borrower with respect to any such amounts. The Borrower shall have the right to reasonably reallocate sums between line items of the Project Budget, as approved by the Lender, provided that the Lender is advised of such reallocation in a timely manner, the total amount of the Project Budget is not increased and the overall quality and

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functionality of the Project is not diminished; provided, however, that no reallocation from the interest reserve amount stated in the Project Budget shall be permitted without Lender's prior written approval. No reallocation among line items which exceeds \$10,000.00 individually, or \$20,000.00 in aggregate, shall be permitted without the Lender's prior written approval.

6. Borrower shall commence work on the Project no later than June 28, 1999, shall diligently make regular progress toward completion, and work to complete the Project no later than November 30, 1999 (the "Completion Date"). Borrower's failure to comply with this paragraph, and Lender's assessment, in its sole discretion, that the Project will not be completed on or prior to the Completion Date shall constitute an Event of Default under the Loan Agreement and the New Note.

7. The Mortgage is hereby amended to secure payment of the New Note, together with any interest, fees or charges thereon or related thereto, and any renewals or extensions of the New Note.

8. Monthly payments of interest under the New Note shall be due and payable on the first day of each month as set forth in the New Note, based on the outstanding principal balance thereof. All principal, together with any accrued and unpaid interest, fees and costs to the Lender shall be due and payable on the Maturity Date.

9. Borrower represents to Lender that there is no junior mortgage or subsequent lien now outstanding against the Premises, except for those, if any, detailed in Guaranty National Title Company's Loan Policy No. 99-0465 originally dated June 18, 1997. Borrower also represents that the lien of the Mortgage, as modified, is a valid first and subsisting lien on the Premises.

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10. In consideration of the modification and restatement of the Original Note, and the modification of the Loan Agreement and Mortgage by Lender, as described above, and for other valuable consideration described in this Agreement, Borrower covenants and agrees to pay the balance of the indebtedness evidenced by the New Note and Loan Agreement, and secured by the Mortgage, as modified, and to perform the covenants contained therein.

11. Borrower acknowledges that it has thoroughly read and reviewed the terms and provisions of this Agreement and is familiar with them. Borrower clearly understands the terms and provisions of this Agreement and has fully and unconditionally consented to them. Borrower has had the full benefit and advice of counsel of its own selection, or the opportunity to obtain the benefit and advice of counsel of its own selection, in regard to understanding the terms, meaning, and effect of the full knowledge, and without duress. In executing this Agreement, Borrower is not relying on any representations, written or oral, express or implied, made to Borrower by any party to the Agreement. Borrower acknowledges that the consideration received or to be received under this Agreement is actual and adequate.

12. As additional consideration for the modification and restatement of the Original Note, and the modification of the Loan Agreement, Mortgage and the other Loan Documents, by Lender, as described above, Borrower releases and forever discharges Lender, and its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors and assigns, and all persons, firms, corporations and organizations on its behalf, from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action of whatever kind or nature which Borrower may now have or claim to have against Lender as of the effective date of this Agreement, whether presently known or unknown, on account of or in any way affecting,

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concerning, arising out of, or founded on the Original Note, the New Note, the Loan Agreement and Mortgage, each as modified by this Agreement, and the other Loan Documents. This includes, but is not limited to, all such loss or damage of any kind suffered or sustained prior to and including the effective date of this Agreement, and arising as a consequence of the dealings between the parties. This Agreement and covenant on the part of the Borrower is contractual, and not a mere recital. The parties acknowledge and agree that no liability whatsoever is admitted on the part of any party, except Borrower's indebtedness to Lender under the New Note, Loan Agreement, Mortgage and the other Loan Documents, and that all agreements and understandings between Borrower and Lender are expressed and embodied in the New Note, Loan Agreement, Mortgage, each as modified by this Agreement, and the other Loan Documents.

13. Nothing contained in this Agreement shall in any manner impair the New Note, the Loan Agreement and Mortgage, as modified, the other Loan Documents, or the first lien created, or any other documents executed by Borrower in connection with the modification, or alter, waive, vary or affect any promise, agreement, covenant or condition recited in any of the foregoing documents, except as expressly provided in this Agreement, or affect or impair any rights, powers or remedies of Lender under any of the foregoing documents. Except as otherwise provided, all terms and provisions of the New Note, Loan Agreement, Mortgage, the other Loan Documents and other instruments and documents executed in connection with the mortgage loan shall remain in full force and effect and shall be binding on the parties, their successors and assigns.



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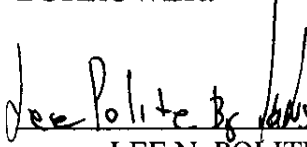
IN WITNESS WHEREOF, this Modification Agreement is executed by BANCO POPULAR, ILLINOIS, not personally, but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said BANCO POPULAR, ILLINOIS hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in said New Note contained shall be construed as creating any liability on said Trustee or on said BANCO POPULAR, ILLINOIS personally to pay the New Note or any interest that may accrue thereon, or any indebtedness accruing thereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder and that so far as said Trustee and said BANCO POPULAR, ILLINOIS personally are concerned, the legal holder or holders of said New Note and the owner or owners of any indebtedness accruing thereunder shall look solely to the Premises hereby conveyed for the payment thereof, by enforcement of the lien hereby created, in the manner herein and in said Note provided, by action against any other security given to secure the payment of said New Note and by action to enforce the personal liability of the Co-Makers or Guarantors of said Note, if any.

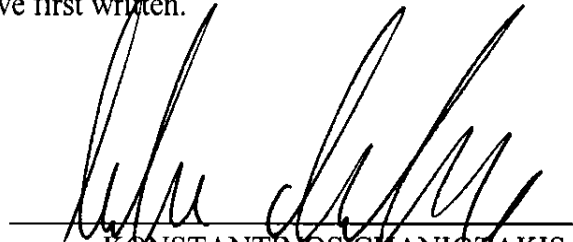
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IN WITNESS WHEREOF, the parties have executed this Mortgage and Loan Agreement

Modification Agreement as of the day and year above first written.

**BORROWER:**

  
\_\_\_\_\_  
LEE N. POLITE

  
\_\_\_\_\_  
KONSTANTINOS CHANIOTAKIS

  
\_\_\_\_\_  
ANTIGONE POLITE


  
\_\_\_\_\_  
KIKI CHANIOTAKIS

BANCO POPULAR, ILLINOIS, f/k/a  
Pioneer Bank and Trust Company, not  
personally, but as Trustee u.t.a. dated  
6/06/96, a/k/a Trust No. 26116

By:   
\_\_\_\_\_  
Its Assistant Vice President

**LENDER:**

**CORUS BANK, N.A.**

By:   
\_\_\_\_\_  
Its FIRST VICE PRESIDENT

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STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

I, Monica Forero, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that LEE N. POLITE and ANTIGONE POLITE, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such individuals, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3rd day of June, 1999.

Monica Forero

Notary Public

My Commission Expires:

12/12/99



STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

I, Monica Forero, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that KONSTANTINOS CHANIOTAKIS and KIKI CHANIOTAKIS, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such individuals, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3rd day of June, 1999.

Monica Forero

Notary Public

My Commission Expires:

12/12/99



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STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

I, Laurel D. Thorpe, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Laura Hughes, Asst. V.P. of BANCO POPULAR, ILLINOIS, f/k/a Pioneer Bank and Trust Company, not personally, but as Trustee u.t.a. dated 6/06/96, a/k/a Trust No. 26116, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Asst. V.P., 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 Trust, as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 9th day of June, 1999.

Laurel D. Thorpe  
Notary Public

My Commission Expires:

2/18/2000



STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

I, Monica Forero, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Lawrence Johnson of CORUS BANK, N.A., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such First Vice President 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 association, as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3rd day of June, 1999.

Monica Forero  
Notary Public

My Commission Expires:

12/12/99



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## EXHIBIT "A"

### LEGAL DESCRIPTION

LOT 10 IN C. N. MC CUBBIN'S SUBDIVISION OF LOTS 5 AND 6 IN THE SUBDIVISION OF BLOCK 5 OF STATE BANK OF ILLINOIS SUBDIVISION OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINIOS.

P.I.N. 17-04-121-042-0000

Commonly known as 1418-1420 N. Mohawk, Chicago, IL

Property of Cook County Clerk's Office

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EXHIBIT E

## REVISED PROJECT BUDGET

1418 - 20 N. Mohawk  
Six Unit Apartment Building

### Hard Costs

Construction Bldg.           \$205,500

### Soft Costs

Points                           \$5,850

Interest (P+1.50%)           \$49,750

Bank Architect               \$2,000

Bank Legal                   \$2,000

Real Estate Taxes           \$4,000

Insurance                    \$1,000

Miscellaneous               \$5,000

Subtotal                      \$275,100

Current Loan Balance       \$359,900 Existing Corus Loan

Total Costs                 \$635,000

Equity                       (\$50,000) paydown current loan

LOAN AMOUNT               \$585,000

Property of Cook County Clerk's Office