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Cook County Recorder 45.50



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SENIOR LOAN MODIFICATION AGREEMENT

THIS SENIOR LOAN MODIFICATION AGREEMENT (SENIOR LOAN) (this "Modification Agreement") is dated as of December 26, 2000 and is made by and among **CONCORD CITY CENTRE L.L.C.**, an Illinois limited liability company ("Borrower"), **FIRST AMERICAN INVESTMENTS, INC.**, an Illinois corporation ("Co-Borrower") and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association ("Lender").

RECITALS

- A. Borrower holds fee simple title to a 23-story office building and related other real property located at the corner of Washington Street and Wells Street in Chicago, Illinois (the "Municipality") and commonly known as Concord City Centre, 208 W. Washington Street, Chicago, Illinois, on land which is legally described in **Exhibit A** (collectively, the "Property").

**This Document Prepared by
and After Recordation Should
Be Returned to:**

**Marc M. Jacobs, Esq.
Barack Ferrazzano Kirschbaum Perlman & Nagelberg
333 West Wacker Drive, Suite 2700
Chicago, Illinois 60606**

DONE AT CUSTOMER'S REQUEST

- B. Lender has made a loan to Borrower in the principal amount of Forty Million Five Hundred Ninety Thousand Eight Hundred Nineteen and 00/100 Dollars (\$40,590,819.00) (the "Senior Loan") pursuant to the terms of a Loan Agreement (Senior Loan) between Lender and Borrower dated as of April 17, 2000 (the "Senior Loan Agreement"). All capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Senior Loan Agreement.
- C. The Senior Loan is evidenced by a Note Secured By Mortgage dated as of April 17, 2000 in the principal amount of Forty Million Five Hundred Ninety Thousand Eight Hundred Nineteen and 00/100 Dollars (\$40,590,819.00) from Borrower to Lender (the "Senior Note") and is secured by, among other things, a Mortgage, Assignment of Rents and Security Agreement of even date with the Senior Note, executed by Borrower and recorded April 25, 2000 with the Cook County Recorder of Deeds as Document No. 00286091 (the "Senior Mortgage").
- D. Borrower entered into that certain Purchase and Sale Agreement (the "Retail P/S Agreement") dated as of April 14, 2000 with Washington Wells L.L.C., an Illinois limited liability company, pursuant to which Borrower agreed to sell and Washington Wells L.L.C. agreed to purchase the Retail Portion of the Property consisting of certain retail/office space (the "Retail Portion"). However, pursuant to the terms of that certain Amendment to Purchase and Sale Agreement and Post Closing Agreement by and among Borrower, Washington Wells L.L.C. and Co-Borrower of even date herewith (the "Amendment to Retail P/S Agreement"), Washington Wells L.L.C. has assigned all of its rights, title and interest in the Retail P/S Agreement to Co-Borrower, and Co-Borrower has accepted such assignment and has assumed all obligations of Washington Wells L.L.C. under such Retail P/S Agreement. In addition, the parties have revised the area and location of the Retail Portion as more specifically set forth in the Amendment to Retail P/S Agreement and as legally described on Exhibit A thereto.
- E. Borrower and Co-Borrower have requested Lender's consent to the Amendment to Retail P/S Agreement, specifically including the assignment of Washington Wells L.L.C.'s rights thereunder to Co-Borrower, as well as Lender's consent to the sale of the Retail Portion to Co-Borrower subject to the Senior Mortgage (and without concurrent payment in full by Borrower of the Release Payment to Lender).
- F. Lender has agreed to consent to the Amendment to Retail P/S Agreement and to the sale of the Retail Portion to Co-Borrower provided that Borrower pay to Lender a partial Release Payment of Two Hundred Forty Thousand and 00/100 Dollars (\$240,000.00) in cash (the "Partial Release Payment") and Co-Borrower join in the Senior Loan as a co-obligor and agree to assume the obligation to repay the indebtedness evidenced by the Senior Note up to a maximum amount not to exceed

One Million Sixty Thousand and 00/100 Dollars (\$1,060,000.00) (the "Co-Borrower's Liability"), without release of Borrower with respect to Co-Borrower's Liability.

THEREFORE, in consideration of the mutual covenants, conditions and agreements herein contained, the parties hereto hereby agree to modify the Senior Loan, the Senior Loan Agreement, the Senior Note, the Senior Mortgage and the other Loan Documents as follows:

AGREEMENTS

1. **Co-Borrower; Assumption of Senior Loan.** The Senior Loan is hereby modified by adding Co-Borrower as co-obligor of the Senior Loan and the obligations thereunder, provided, however, in no event shall the liability of Co-Borrower exceed, in the aggregate, the Co-Borrower's Liability. Co-Borrower hereby agrees to assume jointly with Borrower the obligation to repay the Senior Loan up to the maximum amount, in the aggregate, of Co-Borrower's Liability.

2. **Modification of Senior Loan Agreement.** The Senior Loan Agreement is hereby modified as follows:

(a) Co-Borrower is hereby added as a co-obligor of the Loan, and is obligated to repay the Senior Loan up to a maximum amount not to exceed Co-Borrower's Liability. All references to "Borrower" in the Senior Loan Agreement, the Senior Note, the Senior Mortgage and the other Loan Documents, where appropriate, as reasonably determined by Lender, shall be deemed to include the Co-Borrower, as well as the Borrower.

(b) Section 2.8, Partial Releases, of the Senior Loan Agreement is hereby modified to provide that the closing of the sale of the Retail Portion to Co-Borrower may be consummated without payment in full of the Release Payment provided that (i) Borrower pay the Partial Release Payment to Lender as a prepayment against the Note without penalty or premium, (ii) the Retail Portion shall remain subject to the lien of the Senior Mortgage and (iii) Co-Borrower, Borrower and Guarantor enter into this Modification Agreement and cause same to be recorded promptly and Co-Borrower specifically assumes the obligation to repay the Senior Loan up to a maximum amount not to exceed Co-Borrower's Liability. Clause (i) of Subsection (d) of Section 2.8 is hereby modified to permit the Retail Portion to be acquired by and fee simple title to be held by Co-Borrower and the remainder of said Subsection (d) of Section 2.8, as well as Section 6.25 of the Senior Loan Agreement shall remain in full force and effect with Co-Borrower deemed substituted for Washington Wells therein.

(c) At such time as Borrower pays to Lender the remainder of the Release Payment applicable to the Retail Portion, which must occur on or before the Original Maturity Date, as required by Section 2.9(g) of the Senior Loan Agreement, the amount of the Partial Release Payment shall be credited against Borrower's payment obligation.

(d) The transaction contemplated herein shall not be deemed to constitute a sale or conveyance of the Retail Portion for the purposes of Sections 2.8 (b), 2.9(g) or 9.3 of the Senior Loan Agreement or Section 3.8 of the Senior Mortgage, and the sale or conveyance of the Retail Portion for such purposes shall be deemed to occur upon payment of said remainder of the Release Payment and satisfaction of the other applicable terms and conditions.

3. **Modification of Senior Note.** The Senior Note is hereby modified as follows:

(a) Co-Borrower is hereby added as a co-obligor of the Senior Note and shall be obligated to repay the indebtedness evidenced by the Senior Note up to a maximum amount, in the aggregate, not to exceed Co-Borrower's Liability.

(b) Borrower will continue to be obligated to Lender to make any and all payments due under the Senior Note to Lender, provided, however, that Co-Borrower shall be obligated and hereby agrees to pay to Borrower on or before the due date for any payments required under the Senior Note, Co-Borrower's pro rata share of each such payment (such pro rata share shall be equal to 2.61%).

4. **Modification of Senior Mortgage and Other Loan Documents.** The Senior Mortgage and the other Loan Documents are hereby modified to refer, where applicable, to the Senior Loan Agreement and the Senior Note as modified by the terms of this Modification Agreement.

5. **No Release or Modification of Borrower's Obligations; Co-Borrower's Indemnification.** The parties hereto acknowledge and agree that nothing set forth in this Modification Agreement shall be deemed to release or modify any obligation or liability of Borrower to Lender under the Senior Loan, the Senior Loan Agreement, the Senior Note, the Senior Mortgage or the other Loan Documents, including, without limitation, with respect to Co-Borrower's Liability. Co-Borrower, however, hereby agrees to indemnify and hold Borrower harmless from any and all loss, liability, cost or expense, including, but not limited to, all reasonable attorneys' fees and costs actually incurred by Borrower, arising directly or indirectly from or as a result of Co-Borrower's failure to fully and promptly pay its obligations under the Senior Loan, the Senior Loan Agreement and the Senior Note (including all monthly interest payments thereunder) as set forth in this Modification Agreement, up to a maximum amount, in the aggregate, equal to Co-Borrower's Liability.

6. **Additional Assurances; Additional Lender Requirements.** Borrower and Co-Borrower agree upon Lender's written request to execute and deliver any and all such further documentation and to take such other action as Lender may request in its reasonable discretion to further effectuate the transactions herein set forth. In addition, Borrower and Co-Borrower hereby agree to provide the following items to Lender on or before January 31, 2001: (i) a "date down" endorsement to the Title Insurance Policy assuring the continued priority of the Mortgage on the

Property, including the Retail Portion, subject only to the Permitted Exceptions, (ii) a survey of the Retail Portion certified to Lender in conformance with the survey requirements set forth in the Retail P/S Agreement and (iii) an access and easement agreement between Co-Borrower and Borrower granting the reciprocal right of access and ingress and egress between the Retail Portion and the remainder of the Property, as well as reciprocal easement rights with respect to such parcels permitting construction activities, as well as the use of the Parking Garage and the proposed common areas of the improvements to be constructed on the Property in conformance with the easements to be granted in the Declaration to be recorded against the Property, a draft copy of which such Declaration has been reviewed by the parties hereto.

7. **Reaffirmation of Representations and Warranties; Authority.** The Borrower hereby certifies and confirms to Lender that all of the representations and warranties set forth in the Senior Loan Agreement, the Senior Note and the other Loan Documents, as amended hereby, remain true and correct in all respects as of the date hereof. Borrower, Co-Borrower and Guarantor hereby represent and warrant to Lender that they each have full right, power and authority to execute, deliver and carry out the terms and provisions of this Modification Agreement and any other documents and instruments to be executed and delivered by Borrower, Co-Borrower or Guarantor, as applicable, pursuant to this Modification Agreement. The Modification Agreement and any other documents and instruments to be executed and delivered by Borrower, Co-Borrower and/or Guarantor pursuant to this Modification Agreement, when executed and delivered pursuant hereto, will constitute the duly authorized, valid and legally binding obligations of Borrower, Co-Borrower and Guarantor, as applicable, and will be enforceable strictly in accordance with their respective terms, subject to the effect of bankruptcy and other laws affecting the rights of creditors generally.

8. **Consent and Ratification by Guarantor.** In consideration of this Modification Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby acknowledges and consents to the execution of this Modification Agreement by the parties hereto and to all of the terms, conditions and provisions hereof. The Guaranty of Payment and the Guaranty of Completion (collectively, the "Guaranties") are further amended to provide that all references in the Guaranties to any one or more of the Senior Loan Agreement, the Senior Note, the Senior Mortgage or the other Loan Documents shall be deemed references to the Senior Loan Agreement, the Senior Note, the Senior Mortgage or the other Loan Documents as amended hereby. Guarantor ratifies and reaffirms the Guaranties as amended hereby, and acknowledges and agrees that the Guaranties, as amended hereby, remain in full force and effect.

9. **Ratification of the Senior Loan Agreement, the Senior Note, the Senior Mortgage or the other Loan Documents.** Borrower hereby ratifies and reaffirms the Senior Loan Agreement, the Senior Note, the Senior Mortgage and the other Loan Documents, as amended hereby, and the obligations, liabilities, liens, encumbrances and security interests created thereby. Borrower and Co-Borrower hereby acknowledge that neither Borrower, Co-Borrower nor any person or entity claiming by, through or under Borrower or Co-Borrower has any defense, claim, set-off or counterclaim against the enforcement by Lender of any of the Senior Loan Agreement, the

Senior Note, the Senior Mortgage or the other Loan Documents, as amended hereby, and hereby waives all such defenses, claims, set-offs and counterclaims.

10. **Full Force and Effect.** The Senior Loan Agreement, the Senior Note, the Senior Mortgage or the other Loan Documents, as amended hereby, shall remain in full force and effect in accordance with their respective terms and provisions.

11. **Binding Obligation.** This Modification Agreement and the Senior Loan Agreement, the Senior Note, the Senior Mortgage or the other Loan Documents, as amended hereby, are and shall continue to be binding on Borrower, Co-Borrower and Guarantor and their respective successors and assigns, and inure and shall continue to inure to the benefit of Lender and its successors and assigns. This Modification Agreement shall be deemed a "Loan Document" under the Senior Loan Agreement.

12. **Mezzanine Loan Modification Agreement.** Concurrent with the execution of this Modification Agreement, Borrower and Co-Borrower have entered into and will cause to be recorded a Mezzanine Loan Modification Agreement with the Mezzanine Lender acknowledging the conveyance of the Retail Portion by Borrower to Co-Borrower subject to the Senior Mortgage and the mortgage securing the Mezzanine Loan. Lender hereby acknowledges and consents to the execution and recordation of such Mezzanine Loan Modification Agreement.

13. **Payment of Costs.** Borrower shall pay promptly upon Lender's demand all of Lender's costs and expenses incurred by Lender in connection with this Modification Agreement, including, without limitation, all legal fees of Lender's counsel in connection herewith.

14. **Severability.** If any provision hereof is held to be illegal or unenforceable, such fact shall not affect any other provision hereof, and this Modification Agreement shall be construed as if such provision had never been contained herein.

15. **Amendment; Counterparts.** The terms and conditions hereof may not be modified, amended, altered or otherwise affected except by instrument in writing executed by Lender, Borrower and Guarantor. This Modification Agreement may be executed in one or more counterparts, and all such counterparts so executed shall constitute one and the same agreement binding on the parties hereto, notwithstanding that the parties are not signatories to the same counterpart.

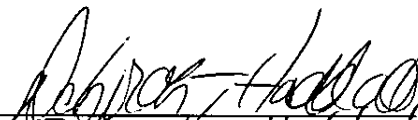
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IN WITNESS WHEREOF, the undersigned has caused these presents to be signed by its duly authorized representative as of the date first above written.

BORROWER:

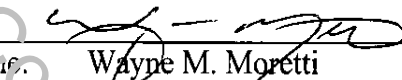
CONCORD CITY CENTRE L.L.C., an Illinois limited liability company

By: **A. C. HOMES CORPORATION VII**, an Illinois corporation, its Managing Member

By: 
Name: Deborah T. Haddad
Its: Vice President

CO-BORROWER:

FIRST AMERICAN INVESTMENTS, INC., an Illinois corporation

By: 
Name: Wayne M. Moretti
Its: President

LENDER:

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association

By: _____
Name: Milda Roszkiewicz
Its: Senior Vice President

Property of Cook County Clerk's Office

IN WITNESS WHEREOF, the undersigned has caused these presents to be signed by its duly authorized representative as of the date first above written.

BORROWER:

CONCORD CITY CENTRE L.L.C., an Illinois limited liability company

By: **A. C. HOMES CORPORATION VII**, an Illinois corporation, its Managing Member

By: _____
Name: _____
Its: _____ President

CO-BORROWER:

FIRST AMERICAN INVESTMENTS, INC., an Illinois corporation

By: _____
Name: **Wayne M. Moretti**
Its: **President**

LENDER:

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association

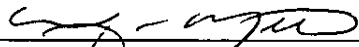
By: *Milda Roszkiewicz*
Name: **Milda Roszkiewicz**
Its: **Senior Vice President**

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GUARANTOR:

**CONCORD DEVELOPMENT
CORPORATION OF ILLINOIS, a**
Delaware corporation

By: 
Name: Wayne M. Moretti
Its: President

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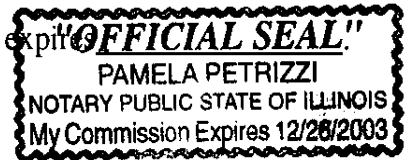
STATE OF ILLINOIS)
) SS.
COUNT OF COOK)

I, Pamela Petrizzi the undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY**, that Wayne M. Moretti, personally known to me to be the President of Concord Development Corporation of Illinois, a Delaware corporation, and 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 as such President he signed and delivered the said instrument as his 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 this 26th day of December, 2000.

Pamela Petrizzi
Notary Public

My Commission expires



STATE OF ILLINOIS)
) SS.
COUNT OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY**, that Milda Roszkiewicz, personally known to me to be the Senior Vice President of Wells Fargo Bank, National Association, a national banking association, who is 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 as such Senior Vice President she signed and delivered the said instrument as her free and voluntary act and as the free and voluntary act of said Bank as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26th day of December, 2000.

Notary Public

My Commission expires _____.

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
 COUNT OF COOK)

I, Diane R. Chartrand, the undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY**, that Wayne M. Moretti, personally known to me to be the President of Concord Development Corporation of Illinois, a Delaware corporation, and 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 as such President he signed and delivered the said instrument as his 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 this 26th day of December, 2000.

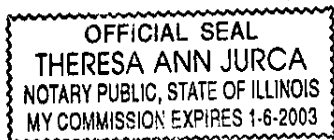
 Notary Public

My Commission expires _____.

STATE OF ILLINOIS)
) SS.
 COUNT OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY**, that Milda Roszkiewicz, personally known to me to be the Senior Vice President of Wells Fargo Bank, National Association, a national banking association, who is 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 as such Senior Vice President she signed and delivered the said instrument as her free and voluntary act and as the free and voluntary act of said Bank as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26th day of December, 2000.



Theresa Ann Jurca
 Notary Public

My Commission expires 1-6-03

EXHIBIT A

LEGAL DESCRIPTION

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SUB LOT 4 IN CANAL TRUSTEES SUBDIVISION OF LOT 7 IN BLOCK 41 IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO:

THE SOUTH 40 FEET OF LOT 8 IN BLOCK 41 IN THE ORIGINAL TOWN OF CHICAGO OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO LOTS 1, 2, 3, 4, 5, 6 AND 7 AND THE VACATED ALLEY IN THE SUBDIVISION OF THAT PART OF LOT 8 IN BLOCK 41 AFORESAID LYING NORTH OF THE SOUTH 40 FEET THEREOF IN COOK COUNTY, ILLINOIS.