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Cook County Recorder 45.50



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MEZZANINE LOAN MODIFICATION AGREEMENT

THIS MEZZANINE 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:**

DONE AT CUSTOMER'S REQUEST

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

- B. Wells Fargo Bank, National Association (with respect to the Senior Loan described below, Wells Fargo Bank, and its successors and assigns, shall be referred to herein as the "Senior 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 Senior Lender and Borrower dated as of April 17, 2000 (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 Senior 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. Lender has made a loan to Borrower in the principal amount of Four Million Six Hundred Thousand and 00/100 Dollars (\$4,600,000.00) (the "Mezzanine Loan") pursuant to the terms of a Loan Agreement (Mezzanine Loan) between Lender and Borrower dated as of April 17, 2000 (the "Mezzanine Loan Agreement"). All capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Mezzanine Loan Agreement.
- E. The Mezzanine Loan is evidenced by a Note Secured By Mortgage dated as of April 17, 2000 in the principal amount of Four Million Six Hundred Thousand and 00/100 Dollars (\$4,600,000.00) from Borrower to Lender (the "Mezzanine Note") and is secured by, among other things, a Mortgage, Assignment of Rents and Security Agreement of even date with the Mezzanine Note, executed by Borrower and recorded April 25, 2000 with the Cook County Recorder of Deeds as Document No. 00286092 (the "Mezzanine Mortgage").
- F. 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.

- G. Borrower and Co-Borrower have requested Senior Lender's and 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 Senior Lender's and Lender's consent to the sale of the Retail Portion to Co-Borrower subject to the Senior Mortgage and the Junior Mortgage (and without concurrent payment in full by Borrower of the Release Payment to Senior Lender).
- H. Senior Lender and Lender have 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 Senior 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.
- I. Senior Lender, Borrower and Co-Borrower concurrent with the entering into of this Modification Agreement, have executed and will cause to be recorded that certain Senior Loan Modification Agreement of even date herewith (the "Senior Modification Agreement").

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

AGREEMENTS

1. **Modification of Mezzanine Loan Agreement.** The Mezzanine Loan Agreement is hereby modified as follows:

(a) Section 2.8, Partial Releases, of the Mezzanine 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 Senior 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 the Mezzanine Mortgage and (iii) Co-Borrower, Borrower and Guarantor enter into the Senior Modification Agreement and 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 Mezzanine Loan Agreement, shall remain in full force and effect with Co-Borrower deemed substituted for Washington Wells therein.

(b) At such time as Borrower pays to Senior Lender or to Lender, as appropriate pursuant to Section 2.8(b) of the Mezzanine Loan Agreement, 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(h) of the Mezzanine Loan Agreement, the amount of the Partial Release Payment shall be credited against Borrower's payment obligation.

(c) 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(h) or 9.3 of the Mezzanine Loan Agreement, 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.

2. **Modification of Other Loan Documents.** The other Loan Documents are hereby modified to refer, where applicable, to the Mezzanine Loan Agreement as modified by the terms of this Modification Agreement.

3. **No Release or Modification of Borrower's Obligations.** 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 Mezzanine Loan, the Mezzanine Loan Agreement, the Mezzanine Note, the Mezzanine Mortgage or the other Loan Documents, including, without limitation, with respect to Co-Borrower's Liability.

4. **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 Mezzanine 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.

5. **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 Mezzanine Loan Agreement, the Mezzanine 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.

6. **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 Mezzanine Loan Agreement, the Mezzanine Note, the Mezzanine Mortgage or the other Loan Documents shall be deemed references to the Mezzanine Loan Agreement, the Mezzanine Note, the Mezzanine 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.

7. **Ratification of the Mezzanine Loan Agreement, the Mezzanine Note, the Mezzanine Mortgage or the other Loan Documents.** Borrower hereby ratifies and reaffirms the Mezzanine Loan Agreement, the Mezzanine Note, the Mezzanine Mortgage and the other Loan Documents, as amended hereby, and the obligations, liabilities, liens, encumbrances and security interests created thereby. Borrower hereby acknowledges that neither Borrower nor any person or entity claiming by, through or under Borrower has any defense, claim, set-off or counterclaim against the enforcement by Lender of any of the Mezzanine Loan Agreement, the Mezzanine Note, the Mezzanine Mortgage or the other Loan Documents, as amended hereby, and hereby waives all such defenses, claims, set-offs and counterclaims.

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

9. **Binding Obligation.** This Modification Agreement and the Mezzanine Loan Agreement, the Mezzanine Note, the Mezzanine Mortgage or the other Loan Documents, as amended hereby, are and shall continue to be binding on Borrower and Guarantor, as applicable, 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 Mezzanine Loan Agreement.

10. **Senior Modification Agreement.** Concurrent with the execution of this Modification Agreement, Borrower and Co-Borrower have entered into and will cause to be recorded the Senior Modification Agreement with the Senior Lender acknowledging the conveyance of the Retail Portion by Borrower to Co-Borrower subject to the Senior Mortgage securing the Senior Loan and the Mezzanine Mortgage securing the Mezzanine Loan, as well as the other matters set forth in Recitals F, G and H hereinabove and Lender hereby acknowledges and consents to the execution and recordation of such Senior Loan Modification Agreement.

11. **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.

12. **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.

13. **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.

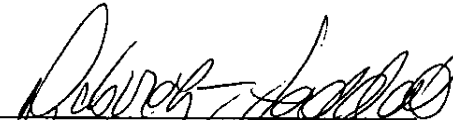
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IN WITNESS WHEREOF, the undersigned has caused these presents to be signed by its duly authorized representative as of the date first above written.

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: Jeffrey Forsythe
Its: _____

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:

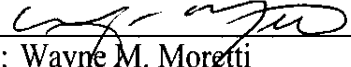
WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association

By: 
Name: Jeffrey Forsythe
Its: **VICE PRESIDENT**

Property of Cook County Clerk's Office

GUARANTOR:

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

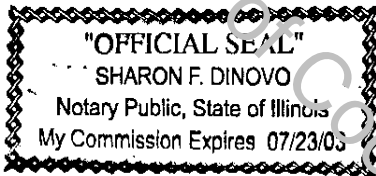
By: 
Name: Wayne M. Moretti
Its: President

Property of Cook County Clerk's Office

STATE OF ILLINOIS)
) SS.
COUNT OF COOK)

I, Sharon F. Dinovo, the undersigned, a Notary Public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that Deborah Tyler Haddad, Vice President of A. C. Homes Corporation VII, an Illinois corporation, as a managing member of Concord City Centre L.L.C., an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President appeared before me this day in person and acknowledged that (s)he signed and delivered said instrument as (her)his own free and voluntary act and as the free and voluntary act of said Deborah Tyler Haddad, as Vice President of said corporation, as a managing member of said limited liability company, for the uses and purposes therein set forth.

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



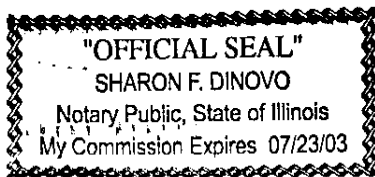
Sharon F. Dinovo
Notary Public

My Commission expires 7/23/03

STATE OF ILLINOIS)
) SS.
COUNT OF COOK)

I, Sharon F. Dinovo, 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 First American Investments, Inc., an Illinois 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.



Sharon F. Dinovo
Notary Public

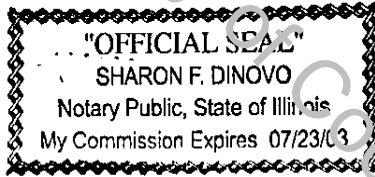
My Commission expires 7/23/03

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STATE OF ILLINOIS)
) SS.
COUNT OF COOK)

I, Sharon F. Dinovo, 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.



Sharon F. Dinovo
Notary Public

My Commission expires 7/23/03

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 Jeffrey Forsythe, personally known to me to be the 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 Vice President he signed and delivered the said instrument as his 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.

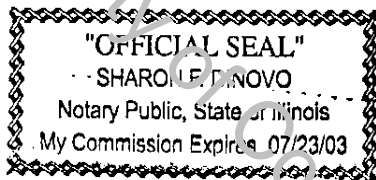
Notary Public

My Commission expires _____.

STATE OF ILLINOIS)
) SS.
COUNT OF COOK)

I, Sharon F. Dinovo, 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.



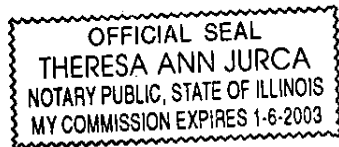
Sharon F. Dinovo
Notary Public

My Commission expires 7/23/03

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 Jeffrey Forsythe, personally known to me to be the 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 Vice President he signed and delivered the said instrument as his 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

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.

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