

UNOFFICIAL COPY

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (this "Modification") is entered into as of June 12, 2000 by and among **First Bank and Trust Company of Illinois**, not personally, but solely as Trustee under Trust Agreement dated May 10, 1999 and known as Trust No. 10-2294 ("Trustee"), **The 1555 West School, L.L.C.**, sole beneficiary of Trustee ("Beneficiary") (Trustee and Beneficiary are collectively called "Borrower"), **Scott Y. Schiller** ("Schiller"), **Michael N. Schwartz** ("Schwartz") (Schiller and Schwartz are hereinafter collectively known as the "Guarantor") and **First Bank and Trust Company of Illinois** ("Lender").

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Cook County Recorder 45.50



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RECITALS:

A. On May 11, 1999, Borrower borrowed from Lender the sum of \$4,000,000 (the "Loan").

B. The Loan was evidenced by a Mortgage Note of even date therewith made by Trustee to Lender in the principal amount of \$4,000,000 (the "Note"). The Note was evidenced and secured, among other things, by the following described documents (said security documents and any other document or instrument securing the Note are hereinafter collectively referred to as the "Loan Documents"):

1. Mortgage by Trustee in favor of Lender, dated May 11, 1999 (the "Mortgage") and recorded November 10, 1999 in the Cook County Recorder's Office as Document No. 09062635;

2. Assignment of Rents and Lessor's Interest in Leases by Borrower in favor of Lender, dated May 11, 1999, and recorded November 10, 1999 in the Cook County Recorder's Office as Document No. 09062636 (the "Assignment of Rents");

3. Security Agreement by and between Borrower and Lender dated May 11, 1999, granting Lender a first security interest in the Collateral (as defined in the Security Agreement);

4. Continuing Guarantee from Guarantor and Beneficiary to Lender dated May 11, 1999 (the "Guarantee");

5. Environmental Indemnity Agreement from Borrower, Guarantor and Beneficiary to Lender dated May 11, 1999 (the "Indemnity");

*First Bank & Trust Company
300 E. Northwest Highway
Palatine, IL 60067*



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6. Construction Loan Agreement, dated May 11, 1999, by and between Borrower and Lender (the "Loan Agreement");
 7. Other loan documents executed in connection with the Loan.
- C. The current outstanding principal balance under the Note is \$1,626,017.77.
- D. Borrower and Guarantor wish, and Lender is willing, to modify the terms of the Loan Documents, subject to the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreement contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into and made a part of this Modification Agreement.
2. Capitalized Terms. Capitalized terms contained in this Modification Agreement shall retain the meaning given under the Loan Agreement or the Loan Documents.
3. Maturity Date. The Maturity Date, as defined in the Loan Documents, is December 31, 2000, and any references to the Maturity Date in the Loan Documents will refer to the Maturity Date as amended by this Modification Agreement.
4. Loan Fee. Upon the execution of this Modification Agreement, Borrower shall herewith pay Lender a fee of \$20,000 and such fee has been fully earned and shall not be refundable regardless of whether any funds are disbursed hereunder, unless such failure to disburse is due solely to Lender's default under this Modification Agreement or any Loan Document.
5. Consent of Guarantor. Guarantor expressly consents to the terms, provisions and conditions of this Modification Agreement and acknowledges and ratifies all other terms of the Guarantee and Indemnity.
6. Conditions Precedent. Borrower and Guarantor acknowledge and agree that this Modification Agreement shall be of no force or effect unless and until:
 - (a) This Modification Agreement has been executed by Borrower and Guarantor and delivered to and accepted and executed by Lender and recorded with the Cook County Recorder's Office.
 - (b) Chicago Title Insurance Company shall have delivered to Lender an endorsement, dated no earlier than the recording date of this Modification Agreement, to its Policy No. 000452307, dated November 10, 1999, which endorsement shall (i) insure the validity and first priority of each of the recorded Loan Documents as securing the Note, as the same are amended by this Modification Agreement; (ii) disclose no Schedule B-1 exceptions other than those set forth in said Policy or as approved in writing by

Lender's counsel; and (iii) insure that Borrower is owner in fee simple of title to the Property

7. Documents to Remain in Effect; Confirmation of Obligations. The Note and the Loan Documents shall remain in full force and effect as originally executed and delivered by the parties, except as expressly modified and amended herein. The Loan Documents shall include this Modification Agreement, and all references in the Note and the Loan Documents to such documents shall be deemed to refer to the Note and Loan Documents as modified herein. Borrower and Guarantor hereby confirm and reaffirm all of their obligations under the Note and the Loan Documents, as modified and amended herein, and confirm and reaffirm that the Loan Documents secure the Note. To induce Lender to enter into this Modification Agreement, Borrower and Guarantor hereby represent, acknowledge and agree that they do not now have or hold any defense to the performance of any of their respective obligations under the Note or the Loan Documents, nor do Borrower or Guarantor have any claim against Lender which might be set off or credited against any payments due under any of the Note or Loan Documents. Borrower and Guarantor further represent, acknowledge and agree that, as of the date hereof, they do not have any actual or potential actions, claims, suits or defenses arising from any letters of intent, correspondence or other communications (oral or written) between Borrower, Guarantor, and Lender.

8. Certifications, Representations and Warranties. In order to induce Lender to enter into this Modification Agreement, Borrower and Guarantor hereby certify, represent and warrant to Lender that all certifications, representations and warranties contained in the Note and the Loan Documents and in all certificates heretofore delivered to Lender are true and correct as of the date hereof, and all such certifications, representations and warranties are hereby remade and made to speak as of the date of this Modification Agreement.

9. Additional Certifications, Representations and Warranties. In addition to the certifications, representations and warranties set forth in the Note and the Loan Documents, Borrower and Guarantor hereby certify, represent and warrant to Lender that:

(a) Borrower and Guarantor have all necessary power to carry on their present businesses, and have full right, power and authority to enter into and execute and deliver this Modification Agreement and to otherwise perform and consummate the transactions contemplated hereby.

(b) Guarantor is under no legal disability and has full right, power and authority to enter into and execute and deliver this Modification Agreement and to otherwise perform and consummate the transactions contemplated hereby.

(c) This Modification Agreement has been duly authorized, executed and delivered by Borrower and Guarantor and constitute valid and legally binding obligations enforceable against each such party in accordance with their terms. The execution and delivery of this Modification Agreement and compliance with the provisions hereof and thereof under the circumstances contemplated herein and therein do not and will not conflict with or constitute a breach or violation of or default under the agreement creating Borrower or any agreement or other instrument to which Borrower, Guarantor, or both, is

a party, or by which any one of them is bound, or to which any of their properties are subject, or any existing law, administrative regulation, court order or consent decree to which any one of them is subject.

(d) There is no litigation or administrative proceeding pending or threatened to restrain or enjoin the transactions contemplated by this Modification Agreement or questioning the validity hereof, or in any way contesting the existence or powers of Borrower or Guarantor, or in which an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Modification Agreement.

(e) Borrower and Guarantor are in full compliance with all of the terms and conditions of this Modification Agreement, the Note and the Loan Documents, no event of default has occurred and is continuing with respect thereto and no event has occurred and is continuing which with the lapse of time or the giving of notice or both would constitute such an event of default, and Borrower and Guarantor hereby release and waive any and all (i) defenses to payment of obligations under the Note and the Loan Documents; and (ii) claims or causes of action which Borrower or Guarantor may have against Lender or its agents.

10. Not a Novation. Borrower, Guarantor and Lender expressly state, declare and acknowledge that this Modification Agreement is intended only to modify Borrower's and Guarantor's continuing obligations under the Note and the Loan Documents in the manner set forth herein and is not intended as a novation.

11. Entire Agreement. This Modification Agreement sets forth all of the covenants, provisions, agreements, conditions and understandings of the parties relating to the subject matter of this Modification Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. The parties hereto hereby agree that the terms of this Modification Agreement supersede all of the terms, conditions and obligations of Lender set forth in all prior commitment letters, correspondence or other commitments (oral or written) between Borrower, Guarantor and Lender relating to this Modification Agreement.

12. Fees. Borrower acknowledges that the Lender charges fees for services it provides in connection with administering its loans including but not limited to, release fees, construction draw fees and inspection fees. These may or may not differ substantially from fees charged by other institutions. Borrower hereby acknowledges receipt of the Lender's current Commercial Real Estate Loan Fee Schedule for the various services described above, a copy of which is attached hereto and made a part hereof as "Exhibit B." Borrower agrees to pay the Lender's fees pursuant to said Schedule and authorizes the Lender to charge said fees directly to the loan balance at the discretion of the Lender. Borrower hereby acknowledges and agrees that certain costs and expenses advanced by the Lender and charged to Borrower (including, but not limited to, appraisal fees, attorney's fees, title fees and environmental inspection report fees) may include not only the Lender's actual out-of-pocket costs but additionally a "mark-up" by the Lender. Borrower acknowledges and agrees that said "mark-up" will be an amount determined by the Lender, in its sole discretion, which may, but does not need to be, deemed reasonable and/or customary to others, and will represent compensation for the Lender's oversight, review

and analysis as well as a profit for the Lender for providing these services. Borrower agrees to pay the Lender's charges for such services rendered by it or others and authorizes the Lender to charge said fees directly to the loan balance at the discretion of the Lender.

13. Additional Documents. Borrower and Guarantor agree to execute and deliver such other and further documents requested by Lender or its counsel to achieve the objectives of this Modification Agreement, provided such other and further documents do not obligate Borrower to provide additional collateral for or materially increase Borrower's or Guarantor's obligations related to the Loan.

14. Successors. This Modification Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

15. Severability. In the event any provision of this Modification Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

16. Amendments, Changes and Modifications. This Modification Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

17. Construction.

a. The words "hereof", "herein", and "hereunder", and other words of a similar import refer to this Modification Agreement as a whole and not to the individual sections in which such terms are used.

b. The headings of this Modification Agreement are for convenience only and shall not define or limit the provisions hereof.

c. Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

d. Any capitalized terms not defined herein shall retain the meaning as set forth in the Loan Documents.

18. Execution of Counterparts. This Modification Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

19. Governing Law. This Modification Agreement is prepared and entered into with the intention that the law of the State of Illinois shall govern its construction and enforcement.

20. Effective Date. The effective date of this Modification Agreement shall be as of the date hereof.

[signatures contained on the following page]

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IN WITNESS WHEREOF, the parties have executed this Modification Agreement as of the date first above written.

LENDER:

FIRST BANK AND TRUST COMPANY OF ILLINOIS

By: 

Its: RESIDENT CEO

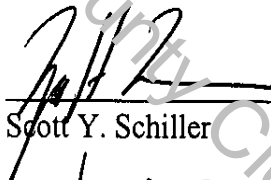
BORROWER:

THE 1555 WEST SCHOOL L.L.C., an Illinois limited liability company

By: Scott Schiller

Its: MEMBER

GUARANTOR:



Scott Y. Schiller



Michael N. Schwartz

[signatures on the following page]

THIS AGREEMENT is executed by First Bank and Trust Company of Illinois (formerly known as First Bank and Trust Co., Palatine, Illinois), not individually, but solely as Trustee, as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said First Bank and Trust Company of Illinois hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained or in said Mortgage contained shall be construed as creating any liability on the said party of the first part or on said First Bank and Trust Company of Illinois (formerly known as First Bank and Trust Co., Palatine, Illinois) individually to pay the said Note or any indebtedness accruing hereunder, or to perform any covenants, either express or implied, herein contained, all such liability, if any, being expressly waived by said party of the second part and by every person now or hereafter claiming any right or security hereunder, and so far as the party of the first part and its successor and First Bank and Trust Company of Illinois (formerly known as First Bank and Trust Co., Palatine, Illinois) individually are concerned, the legal holder or holders of said Note and any persons to whom any indebtedness may be due hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said Note provided.

IN WITNESS WHEREOF, First Bank and Trust Company of Illinois (formerly known as First Bank and Trust Co., Palatine, Illinois), not personally, but as Trustee under the provisions of a Trust Agreement dated May 10, 1999 and known as Trust No. 10-2294, has caused these presents to be signed by its Assistant Trust Officer and its Assistant Trust Officer, and its corporate seal to be hereunto affixed and attested by its Assistant Trust Officer, this ___ day of June, 2000.

FIRST BANK AND TRUST COMPANY OF ILLINOIS, NOT PERSONALLY, BUT SOLELY AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 10, 1999 AND KNOWN AS TRUST NO. 10-2294

By: 

Name: MICHAEL C. WISSEL

Title: President / CEO

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Scott Schiller, the MEMBER of The 1555 West School 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 MEMBER, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 14th day of June, 2000.

Dee K Rickhoff
NOTARY PUBLIC
OFFICIAL SEAL
DEE K RICKHOFF
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 11/18/03

(SEAL)

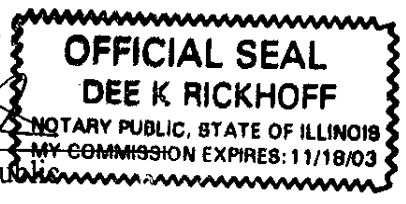
My Commission expires:
11/18/03

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, Michael C Winter, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Michael C. Winter, the President of FIRST BANK AND TRUST COMPANY OF ILLINOIS, 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 he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said bank for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 14th day of June, 2000.

Dee K Rickhoff
Notary Public



My Commission Expires:
11/18/03

Property of Cook County Clerk's Office

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Scott Y. Schiller, 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 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 14th day of June, 2000.

Dee K Rickhoff
Notary Public

OFFICIAL SEAL
DEE K RICKHOFF
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 11/18/03

My Commission Expires:
11/18/03

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Michael N. Schwartz, 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 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 14th day of June, 2000.

Dee K Rickhoff
Notary Public **OFFICIAL SEAL**
DEE K RICKHOFF
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 11/18/03

My Commission Expires:

11/18/03

Property of Cook County Clerk's Office

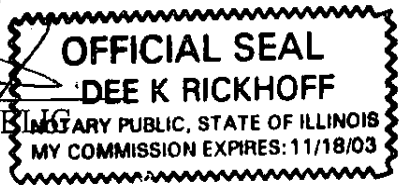
STATE OF ILLINOIS)
)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that _____ and _____, Trust Officers of FIRST BANK AND TRUST COMPANY OF ILLINOIS (formerly known as First Bank and Trust Co., Palatine, Illinois), not personally but solely as Trustee under Trust Agreement dated May 10, 1999 and known as Trust No. 10-2294, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Trust Officer and, 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 First Bank and Trust Company of Illinois, not personally but solely as Trustee aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 14th day of June, 2000.

Property of Cook County Clerk's Office

Dee K Rickhoff
NOTARY PUBLIC



(SEAL)

My Commission expires:

11/18/03

Exhibit A

Legal Description

LOT 20 IN KEMNITZ AND WOLFF'S SUBDIVISION OF THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART LYING WEST OF A LINE 50 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SECTION CONVEYED TO THE CITY OF CHICAGO BY DOCUMENT 10564761); ALSO LOTS 1, 2, AND 3 IN RESUBDIVISION OF LOTS 21 TO 29 IN KEMNITZ AND WOLFF'S SUBDIVISION AFORESAID, ALL IN COOK COUNTY, ILLINOIS.

Property Address: 1555 West School, Chicago, Illinois

P.I.N.: 14-20-324-044-0000

This instrument prepared by,
and after recording mail to:
Marc S. Joseph
D'Ancona & Pflaum LLC
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601

#2592215