

0021461760

UNOFFICIAL COPY

2002-12-31 10:02:06  
Cook County Recorder 42.00

PREPARED BY AND  
MAIL TO:

Deborah J. Kramer, Esq.  
Heinrich & Kramer, P.C.  
205 W. Randolph, Suite 1750  
Chicago, IL 60606



*Return To Box  
340*

Loan No.: \_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**SECOND MORTGAGE LOAN MODIFICATION AGREEMENT**

**THIS SECOND MORTGAGE LOAN MODIFICATION AGREEMENT** (the "Agreement"), made as of the 18th day of December, 2002, between **MATTESON II, LLC**, an Illinois limited liability company ("Borrower"), whose address is c/o Marc Realty, 200 West Jackson Boulevard, Suite 1200, Chicago, IL 60606 and **ST. FRANCIS BANK, F.S.B.**, a federal savings bank, ("Lender") as mortgagee whose address is 13400 Bishops Lane, Suite 190, Brookfield, WI 53005-6203.

**WITNESSETH:**

**WHEREAS**, to evidence an \$1,350,000.00 mortgage loan (the "Loan") from Lender to Borrower, Borrower had executed and delivered to Lender a certain Adjustable Rate Note dated June 24, 1999, as Maker, payable to the order of Lender in the stated sum of One Million Three Hundred Fifty Thousand Dollars (the "Note"), which Note is secured by that certain Mortgage executed by Borrower in favor of Lender of even date with the Note, encumbering the real estate legally described on Exhibit "A" attached hereto and made a part hereof (the "Real Estate"), which was recorded in the office of the Recorder of Deeds, Cook County, Illinois (the "Recorder's Office") on June 29, 1999 as Document No. 99626161 (the "Mortgage"); and

**WHEREAS**, as further security for and to otherwise evidence the terms and conditions of the Loan, Borrower had executed and delivered to Lender that certain: (i) Assignment of Rents and Leases dated June 24, 1999 in favor of Lender recorded in the Recorder's Office on June 29, 1999 as Document No. 99626162 (the "Assignment of Rents and Leases"); (ii) UCC Financing Statements recorded against the Real Estate and filed with the Secretary of State (the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

“UCCs”); and (iii) other related and ancillary documents (the “Related Documents”). The Mortgage, Assignment of Rents and Leases, the UCCs, and Related Documents are hereinafter sometimes collectively referred to as the “Loan Documents”; and

**WHEREAS**, Borrower, whose managing members are managing members of Highpoint Plaza L.L.C., an Illinois limited liability company formerly known as Family Square L.L.C. (referred herein as the “Highpoint Plaza Borrower”) had cross-collateralized and cross-defaulted the Loan with the \$8,000,000.00 mortgage loan (the “Highpoint Plaza Loan”) from Lender to the Highpoint Plaza Borrower as was all evidenced by that certain Mortgage Loan Modification Agreement executed by Borrower dated May 6, 2002 and recorded on May 15, 2002 in the Recorder’s Office as Document No. 0020553383 (the “First Loan Modification”), Borrower having also cross-collateralized and cross-defaulted the Loan with the “Euclid Center Loan”, as defined in the First Loan Modification); and

**WHEREAS**, Highpoint Plaza Borrower has or is about to pay Lender the Highpoint Plaza Loan in full; and

**WHEREAS**, Borrower has requested and Lender has agreed to revise the First Loan Modification to delete the cross-collateralization and cross-default provisions with the Highpoint Plaza Loan and to otherwise modify the terms of the Loan.

**NOW THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter contained, it is hereby agreed as follows:

1. The preamble hereof is hereby incorporated into the main body of this Agreement.
2. The “Euclid Center Loan Documents”, as defined in the First Loan Modification, are modified by a Mortgage Loan Modification Agreement of even date herewith (the “Euclid Modification”). All references herein to all or any of the Euclid Center Loan Documents shall mean such Euclid Center Loan Documents, as modified by the Euclid Modification.
3. Subject to the provisions of Paragraph 11 of this Second Loan Modification Agreement, all references in the First Loan Modification to the Highpoint Plaza Borrower, the Highpoint Plaza Loan, the Highpoint Plaza Note, the Highpoint Plaza Mortgage, the Highpoint Plaza Assignment of Rents and Leases, Highpoint Plaza UCCs, the Highpoint Plaza Modification and the Highpoint Plaza Real Estate are all hereby deleted whether with respect to cross-collateralization, additional security, as a subject of cross-defaults or otherwise.
4. Subject to the provisions of Paragraph 11 of this Second Loan Modification Agreement, Paragraph 10 of the First Loan Modification is hereby deleted and replaced with the following:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

“Upon payment in full of the Loan, the Mortgage, as modified by this First Loan Modification and by this Second Mortgage Loan Modification Agreement, shall be released notwithstanding the fact that the collateral under the Loan is collateral for repayment of the Euclid Center Loan. Further, the First Loan Modification and this Second Mortgage Loan Modification Agreement shall be released at any time during the term of the Loan, upon the written request of Borrower, provided that there is no default under the Loan or the Euclid Center Loan, and provided that:

- A. (1) the combined (a) rental income for the Euclid Center Real Estate, and (b) expenses for the Euclid Center Real Estate, for a rolling twelve (12) month period increased by an additional 3.5%, reflect a debt service coverage of 1.35 on a combined basis.

Lender shall, in calculating such debt service coverage: ( i) base the rental income for the Euclid Center Real Estate on the most recent months' rent rolls and annualize the same; (ii) until the Euclid Center Real Estate has a twelve (12) month operating history with the Euclid Center Borrower and in lieu of the 12 months of expenses plus 3.5%, use the expenses of the Euclid Center Real Estate, on an annualized basis, as were utilized by Lender in the underwriting of the Euclid Center Loan for determining the Euclid Center Loan expenses; and (iii) use the greater of the current interest rate per annum or seven percent (7%) per annum interest rate and a 25-year amortization schedule in calculating the Euclid Loan debt service; and

- (2) the projected debt service coverage for the Euclid Real Estate, for the twelve (12) month period thereafter, as adjusted for tenant turnover, as determined by Lender, during such twelve (12) month period, is not less than 1.25.

Lender shall, in calculating such debt service coverage: ( i) base the rental income (before adjustment for tenant turnover) on that calculated in subparagraph A(1) hereinabove; (ii) base the expenses on that calculated in subparagraph A(1) hereinabove; and (iii) use the interest rate and amortization set forth in subparagraph A(1) above in calculating the Euclid Loan debt service; or

- B. the debt service coverage for the Euclid Center Real Estate for a full calendar year, as calculated by Lender, is not less than 1.25.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

The calculations performed in connection with subparagraphs A and B are made in reliance on the income and expense statements and rent schedules prepared by and certified on behalf of the Euclid Center Borrower, all in form and content acceptable to Lender.”

5. Section 4.11 of the Mortgage is hereby modified to provide that Borrower shall additionally furnish Lender within thirty (30) days after the end of each calendar quarter each in reasonable detail and each certified by Borrower: (i) a balance sheet of the Property; (ii) a statement of income and expenses of the Property; and (iii) a current rent schedule.
6. In the event of any conflict between any of the terms and conditions under any of the Loan Documents, as modified by the First Loan Modification, and any of the terms and provisions of this Second Mortgage Loan Modification Agreement, the terms and provisions of this Second Mortgage Loan Modification Agreement shall prevail.
7. All references in the Note or any of the Loan Documents, to the Note or to any of the Loan Documents shall be construed to be references to the Note and such Loan Document(s), as modified by this First Loan Modification (to the extent that there is no conflict between the terms and conditions of the First Loan Modification and this Second Mortgage Loan Modification Agreement) and by this Second Mortgage Loan Modification Agreement.
8. Borrower shall pay all costs and expenses in connection with this Second Mortgage Loan Modification Agreement including any future partial release or modification thereof including (but not limited to) recording costs and the Lender’s counsel fees and costs.
9. Borrower represents that as of the date of execution of this Second Mortgage Loan Modification Agreement, Borrower has no claims, defenses or offsets against Lender with respect to the Loan or otherwise.
10. Except as amended by this Second Mortgage Loan Modification Agreement, nothing herein contained shall alter, waive, annul, vary or affect the terms and provisions of the Note or any of the Loan Documents, as modified by the First Loan Modification, which Note and Loan Documents, as modified by the First Loan Modification, shall continue in full force and effect, as amended.
11. Notwithstanding anything to the contrary in this Second Mortgage Loan Modification Agreement, the effectiveness of Paragraphs 3 and 4 of this Second Mortgage Loan Modification Agreement (regarding Highpoint Plaza) is contingent upon and subject to the receipt by Lender of the repayment in full of the Highpoint Plaza Loan.

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower has executed this Second Mortgage Loan Modification Agreement on the date first above written.

MATTESON II, LLC, an Illinois limited liability company

By: Gerald Lee Nudo  
Gerald Lee Nudo, its Manager

By: Laurence H. Weiner  
Laurence H. Weiner, its Manager

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

ST. FRANCIS BANK, F.S.B.,  
a federal savings bank

By: *Layne Turner*  
Its: Vice President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

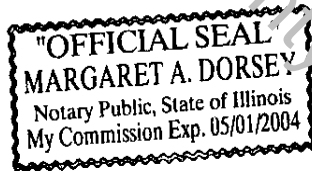
STATE OF ILLINOIS     )  
  )     SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **GERALD LEE NUDO** and **LAURENCE H. WEINER**, individuals and Managers of **MATTESON II, LLC**, an Illinois limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered the said instrument, on behalf of the company and on their own behalf, as their free and voluntary act and as the free and voluntary act of the company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18<sup>th</sup> day of December, 2002.

*Margaret A Dorsey*  
\_\_\_\_\_  
Notary Public

My Commission Expires:



UNOFFICIAL COPY

Property of Cook County Clerk's Office

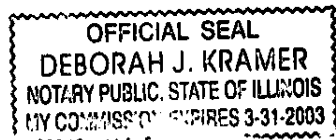
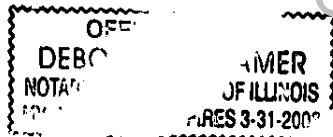
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that LAYNE BURNS, personally known to me to be a Vice President of ST. FRANCIS BANK, F.S.B. and 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, sealed and delivered the said instrument, on behalf of ST. FRANCIS BANK, F.S.B., as his free and voluntary act and as the free and voluntary act of ST. FRANCIS BANK, F.S.B., for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18th day of December, 2002.

*Deborah J. Kramer*  
\_\_\_\_\_  
Notary Public

My Commission Expires:



UNOFFICIAL COPY

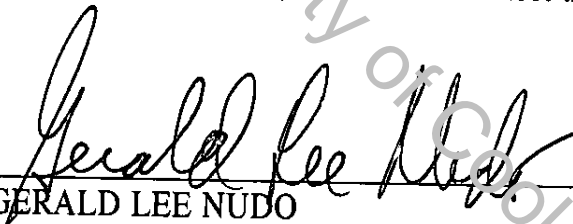
Property of Cook County Clerk's Office

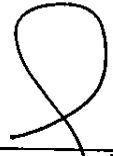


CONSENT OF GUARANTORS AND MODIFICATION TO GUARANTY

The Undersigned are the guarantors under that certain Guaranty ("Guaranty") dated June 24, 1999 guarantying the Note, the Mortgage and the Loan Documents, as modified by the First Loan Modification, all as referred to and as modified in the foregoing instrument.

The undersigned hereby consent to the execution and delivery of the foregoing Second Mortgage Loan Modification Agreement, and reaffirm their obligations under the Guaranty, and agree that the Guaranty continues to be the valid, binding and enforceable obligation of each of the Guarantors, jointly and severally, and that there are no existing claims or defenses, personal or otherwise, which would affect the enforceability of the Guaranty.

  
GERALD LEE NUDO

  
LAURENCE H. WEINER

PROPERTY OF COOK COUNTY CLERK'S OFFICE

UNOFFICIAL COPY

Property of Cook County Clerk's Office

**EXHIBIT A**

**LEGAL DESCRIPTION**

**PARCEL 1:**

LOT 1 IN SOUTHWICK OFFICE CENTER, A RESUBDIVISION OF PART OF LOT 11 IN LINCOLN MALL, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 35 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 22, 1986 AS DOCUMENT 86205183 IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR STORM AND SANITARY SEWERS, INGRESS AND EGRESS ACROSS AND UPON RING ROAD AND SPOKE ROAD ESTABLISHED BY TOTAL SITE AGREEMENT RECORDED MARCH 24, 1972 AS DOCUMENT 21846182 AND RECIPROCAL CONSTRUCTIONS, OPERATION AND EASEMENT AGREEMENT RECORDED MARCH 24, 1972 AS DOCUMENT 21846183, SUPPLEMENTED BY EASEMENT RELOCATION AGREEMENT RECORDED AS DOCUMENT 24099609.

**PARCEL 3:**

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS SET FORTH AND DEFINED IN DECLARATION OF EASEMENTS RECORDED NOVEMBER 23, 1979 AS DOCUMENT 25252788 AND RECIPROCAL EASEMENT AGREEMENT RECORDED MAY 2, 1983 AS DOCUMENT 26589067, FOR DIRECT VEHICULAR PASSAGE, INGRESS AND EGRESS AND PARKING.

PROPERTY ADDRESS: 4749 Lincoln Mall Drive, Matteson, IL

P.I.N.: 31-22-300-058

UNOFFICIAL COPY

Property of Cook County Clerk's Office