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Cook County Recorder 43.00

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**NOTE MODIFICATION AND
SECOND MORTGAGE
AND LOAN DOCUMENT
MODIFICATION
AGREEMENT**

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THIS NOTE
MODIFICATION AND SECOND
MORTGAGE AND LOAN DOCUMENT MODIFICATION AGREEMENT ("Agreement") is
made as of this 28th day of March, 2000 but effective February 19, 2000 by MER KEDZIE,
LLC, an Illinois limited liability company ("Mortgagor") and BANK ONE, ILLINOIS, NA, a
national banking association ("Mortgagee").

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J.

RECITALS.

WHEREAS, Borrower and Lender are parties to a Construction Loan Agreement dated as
of January 28, 1999 (the "Loan Agreement"); and

WHEREAS, to evidence the loan to be made by Lender pursuant to the Loan Agreement
(the "Loan"), Borrower executed a certain Promissory Note dated January 28, 1999 from
Borrower to Lender in the original principal amount of \$4,200,000.00 (the "Note"); and

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING MAIL TO:**

Michael S. Kurtzon
Miller, Shakman, Hamilton,
Kurtzon & Schlifke
208 South LaSalle Street
Suite 1100
Chicago, Illinois 60604

PERMANENT INDEX NO.:

See Exhibit "A"

ADDRESS OF PROPERTY:

Southeast corner of Irving Park Road
Chicago, Illinois

BOX 333-CT1

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WHEREAS, the Note was secured by a certain Construction Mortgage and Security Agreement with Assignment of Rents from Borrower in favor of Lender dated January 28, 1999 recorded with the Cook County Recorder ("Recorder") on February 24, 1999 as Document No. 99181576 (the "Original Mortgage"), which Original Mortgage encumbered certain real property located in Cook County, Illinois, legally described as shown on Exhibit "A" attached thereto ("Original Real Property"); and

WHEREAS, the Note was further secured by an Assignment of Leases and Rents from Borrower in favor of Lender dated as of January 28, 1999, recorded with the Recorder on February 24, 1999, as Document No. 99181577 ("Original Assignment of Leases") which encumbers the Original Real Estate, and by certain other "Loan Documents" (as that term is defined in the Loan Agreement); and

WHEREAS, the Loan Agreement contemplated that title to "Additional Real Estate" (as defined in the Loan Agreement) would be acquired by Borrower, developed by Borrower and added to the property encumbered by the Original Mortgage, Original Assignment of Leases and other Loan Documents; and

WHEREAS, Borrower acquired the "Additional Real Estate" and added such real estate to the property encumbered by the Original Mortgage, Original Assignment of Leases and other Loan Documents pursuant to a Modification of Mortgage, Assignment of Leases and other Loan Documents dated March 2, 1999 and recorded March 5, 1999 with the Recorder as Document No. 99216630 (the "First Modification Agreement") so that the legal descriptions of the "Real Estate" and "Mortgaged Premises" (as defined in the Loan Agreement and Mortgage) were changed to the legal description attached as Exhibit "A" hereto; and

WHEREAS, the Loan has been fully funded and the outstanding principal balance thereof is \$4,200,000.00; and

WHEREAS, the parties desire to convert the Loan from a construction loan to a term loan on the basis set forth herein.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration in hand paid the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions. The parties acknowledge the accuracy of the recitals all of which are incorporated herein by this reference. All defined terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

2. Note. The Note is amended as follows:

(a) Paragraph 1.1 is amended by adding the following at the end thereof:

"During the "First Extension Period" (as defined in Paragraph 1.2 below), the unpaid principal balance of this Note will accrue interest at a rate per annum which will from time to time equal the Index, plus two (2%) percent. If the "Maturity Date" (as defined in Paragraph 1.2 below) of this Note is extended pursuant to Paragraph 1.2, then, during the "Second Extension Period" (as defined in Paragraph 1.2 below) the unpaid principal balance of this Note will accrue interest at a rate per annum which will from time to time equal the Index, plus two (2%) percent. If the Maturity Date of this Note is further extended pursuant to Paragraph 1.2, then during the "Third Extension Period" (as defined in Paragraph 1.2 below) the unpaid principal balance of this Note will accrue interest at a rate per annum which will from time to time equal to the Index, plus two and one-half (2.50%) percent."

(b) The "Maturity Date" (as defined in Paragraph 1.2 of the Note) is extended from February 19, 2000 to March 15, 2001 (the period commencing March 15, 2000 and ending March 15, 2001 is referred to herein as the "First Extension Period");

(c) The following is added after the first paragraph of Paragraph 1.2 of the Note:

"Subject to satisfaction of all of the following conditions, Borrower shall have the right to extend the Maturity Date for two additional one year periods, the first period commencing March 15, 2001 and expiring March 15, 2002 the "Second Extension Period") and the second period commencing March 15, 2002 and expiring March 15, 2003 (the "Third Extension Period");

(a) Borrower shall notify Lender in writing of its election to extend the Maturity Date at least thirty (30) days prior to the expiration of the then current term;

(b) Borrower shall pay Lender an extension fee equal to one-quarter percent (.25%) of the then current outstanding principal balance of the indebtedness evidenced by this Note at the time each extension right is exercised;

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(c) No Default or Event of Default shall exist under the Loan Agreement, Note, Mortgage or any other Loan Document; and

(d) The Property shall have a "Debt Coverage Ratio" (as hereinafter defined) of not less than 1.05 to 1 based upon the amortization of the unpaid principal balance of the indebtedness evidenced by this Note as of the last day of the then current term of this Note (the "Calculation Date") over a period of twenty five (25) years with an interest rate per annum equal to the yield-to-maturity percentage for the United States Treasury Bond or Note having a maturity of ten (10) years (as published in The Wall Street Journal on the fifth (5th) business day preceding the Calculation Date (or if (A) publication of The Wall Street Journal is discontinued, or (B) publication of the Current Yield of the Treasury Note or Bond in The Wall Street Journal is discontinued, Lender, in its sole discretion, shall designate another daily financial or governmental publication of national circulation) plus 185 basis points (1.85%). Debt Coverage Ratio shall mean the ratio of Operating Cash Flow to Debt Service. As used herein, "Operating Cash Flow" shall mean all rental and other operating income arising from the ownership and operation of the Property (excluding tenant security deposits except for forfeited security deposits) to be paid by tenants under fully signed leases approved by Lender and who have taken possession of their premises and commenced rent payments to be received during the twelve month (12) period prior to the Calculation Date less the sum of all costs, taxes, expenses and disbursements of every kind, nature or description reasonably projected in good faith and on a reasonable basis by Borrower, paid during said twelve month period in connection with the leasing, management, operation, maintenance and repair of the Premises (including reasonable reserves as determined by Lender) and of the personal property, fixtures, machinery, equipment, systems and apparatus located therein or used in connection therewith, but excluding (i) non-cash expenses, such as depreciation and amortization costs, (ii) state and federal income taxes, (iii) the non-current portion of capital expenditures determined in accordance with generally accepted accounting principles, (iv) debt service payable on the Loan, and (v) principal and interest payments on other loans permitted by Lender. In determining Operating Cash Flow, (A) extraordinary items of income, such as those resulting from casualty or condemnation or lease termination payments of tenants, shall be deducted from income and (B) real estate taxes

and insurance premiums shall be treated as expenses to the extent of an annualized amount based upon the amount of the most recent bill for real estate taxes and insurance premiums.

On the fifteenth day of each month of the First Extension Period and, if Borrower elects to extend the Maturity Date, on the fifteenth day of each month thereafter, Borrower shall pay equal monthly installments of the principal indebtedness evidenced by this Note in the amount of \$3,968.34, together with interest on the outstanding balance of the principal indebtedness evidenced hereby at the Interest Rate then in effect, with a final balloon payment of the remaining principal indebtedness, together with all accrued unpaid interest, due on the Maturity Date."

3. Mortgage. The Mortgage is amended as follows:

The maturity date of the Note set forth in the WHEREAS clause on the first page of the Mortgage is changed from February 19, 2000 to March 15, 2001, subject to extension for two additional 12 month periods to March 15, 2003 on the terms and conditions set forth in the Note.

4. Loan Agreement. The Mortgagee acknowledges that the entire Loan Amount of \$4,200,000.00 has been funded by Lender. Of the Loan Amount, \$353,074.52 has been funded into the construction escrow (the "Escrow") established with the Title Company. If, within one hundred twenty (120) days from the date hereof, the Title Company has not redispensed all of the funds in the Escrow pursuant to the "Project Budget" (as defined in the Loan Agreement), any funds remaining in the Escrow shall be returned to Mortgagee and used to pay down the Loan. Such funds may not thereafter be reborrowed.

5. Loan Documents. All references in the Loan Documents to the maturity date of the Note shall refer to the Note as modified hereby.

6. Additional Documents. Concurrently herewith as to items (a) and (f) below and within thirty (30) days from the date hereof as to all other items below, Mortgagee shall deliver, or cause to be delivered, to Mortgagee the following:

- (a) A loan extension fee in the amount of \$10,500.00;
- (b) A date-down endorsement to Mortgagee's lender's title insurance policy that shows no exceptions to title other than those shown on Mortgagee's original policy other than current, non-delinquent real estate taxes;

(c) A current certificate of existence for Mortgagor issued by the Illinois Secretary of State and either certified copies of the operating agreement (the "Operating Agreement") and Articles of Organization for Mortgagor (the "Articles"), together with all amendments thereto, if any, or certification that there has been no modification to the Operating Agreement or Articles from the copies thereof delivered to Mortgagee at the time the Loan was disbursed;

(d) An opinion of Mortgagor's counsel as to the transactions described in this Agreement in substantially the same form as the opinion of counsel delivered to Mortgagor by Mortgagor's counsel at the time the Loan was disbursed;

(e) Current UCC, judgment, pending litigation and Federal and State tax lien searches (Secretary of State, Cook County and Northern District of Illinois) on Mortgagor and the guarantors of the Note (the "Guarantors");

(f) A Reaffirmation of Guaranties from the Guarantors; and

(g) Such other documents, instruments and certificates as Mortgagee shall reasonably require.

7. Non-Impairment. Nothing herein contained shall impair the Loan Agreement, Mortgage, Note and other Loan Documents in any way, nor alter, waive, annul, vary, nor affect any provision or condition therein contained except as expressly herein provided, nor affect or impair any right, power, or remedy of Mortgagee, it being the intention of the parties hereto that the terms and provisions of the Loan Agreement, Mortgage, Note and other Loan Documents shall continue in full force and effect except as expressly modified in connection herewith.

8. Authorization. Mortgagor represents and warrants that all necessary limited liability company action necessary to authorize the execution, delivery and performance of this Agreement has been taken and Mortgagor shall deliver or cause to be delivered to Mortgagee such evidence thereof as Mortgagee shall reasonably require.

9. Counterclaims. Mortgagor hereby reaffirms, ratifies and confirms its obligations and liabilities under the Loan Agreement, Note, Mortgage and Loan Documents to which it is a party and the liens and security interests created thereby, and acknowledges that (i) as of the date hereof, Mortgagor has no defense, offset or counterclaim with respect to the payment of any sum owed to the Mortgagee or with respect to any covenant in the Loan Agreement, Mortgage, Note or any of the other Loan Documents; (ii) Mortgagee, on and as of the date hereof, has fully performed all obligations owed Mortgagor which it may have had or has had on and as of the date hereof; and (iii) by entering into this Agreement, the Mortgagee does not waive any condition or obligation in the Loan Agreement, Mortgage, Note or any other Loan Document.

10. Reaffirmation of Representations and Warranties. Mortgagor hereby remakes and reaffirms all representations and warranties made by Mortgagor in the Loan Agreement, Mortgage and other Loan Documents and represents and warrants that all such representations and warranties are true and correct as of the date hereof.

11. Representations and Warranties. Mortgagor hereby represents and warrants to Mortgagee as follows:

(a) Mortgagor has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Upon the execution and delivery hereof, this Agreement shall be valid, binding and enforceable upon Mortgagor in accordance with its terms. Execution and delivery of this Agreement does not and will not contravene, conflict with, violate or constitute a default under: (i) the Operating Agreement of Mortgagor; (ii) the Articles of Mortgagor; (iii) any applicable law, statute, ordinance, rule or regulation; or (iv) any agreement, indenture or instrument to which Mortgagor is bound or which is binding upon or applicable to the Property or any portion thereof;

(b) There is not any litigation, arbitration, governmental or administrative proceeding, action, examination, claims or demands pending, or to Mortgagor's knowledge, any condition, event or circumstance existing or any litigation, arbitration, governmental or administrative proceeding, action, examination, claims or demands threatened, affecting Mortgagor, Guarantors or the Property or involving the validity or enforceability of the Loan Agreement, Note, Mortgage, Assignment of Rents or Loan Documents or involving any risk of a judgment or liability which if satisfied, would have a materially adverse affect on the financial condition, business or property of Mortgagor or Guarantors or the priority of the liens of the Mortgage, Assignment of Rents or Loan Documents or which would prevent Mortgagor from complying with or performing its obligations under the Loan Agreement, Note, Mortgage, Assignment of Rents or the Loan Documents, within the time limit set forth therein for such compliance or performance, and no basis for any such matter exist.

(c) As of the date hereof, Mortgagor and Guarantors are solvent and able to pay their respective debt as such debts become due and each has capital sufficient to carry on its respective business transactions. The value of Mortgagor's and each Guarantor's respective properties, at a fair valuation, is greater than the sum of its respective debts. Neither Mortgagor nor either Guarantor is bankrupt or insolvent, nor has either of them made an assignment for the benefit of its respective creditors nor has there been a trustee or receiver appointed for the benefit of its respective creditors, nor has there been any bankruptcy, reorganization or insolvency proceeding instituted by or against either of them, nor will either of them be rendered insolvent by its execution, delivery or performance of the Loan Agreement, Note, Mortgage, Assignment of Rents or the Loan Documents.

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(d) The Loan Agreement, Note, Mortgage, the Assignment of Rents and the other Loan Documents are in full force and effect in accordance with their respective terms and no Event of Default or default exists under the Loan Agreement, Note, Mortgage, the Assignment of Rents or any of the other Loan Documents.

12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

13. Changes in Writing. No extension, change, modification or amendment of any kind or nature whatsoever, to or of this Agreement shall be made or claimed by Mortgagor, and no notice of any extension, change, modification or amendment, made or claimed by Mortgagor shall have any force or effect whatsoever unless the same shall be reduced to writing and signed by the parties.

14. Non-Modification. No extension, change, modification or amendment of any kind or nature whatsoever, to or of this Agreement shall be made or claimed by Mortgagor, and no notice of any extension, change, modification or amendment, made or claimed by Mortgagor shall have any force or effect whatsoever unless the same shall be reduced to writing and signed by the parties.

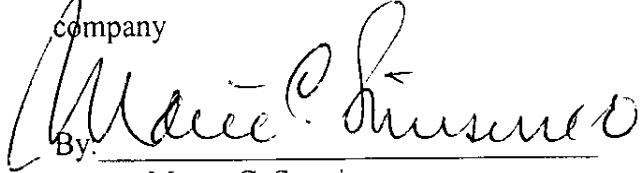
15. Full Force and Effect. Except as modified hereby, the Loan Agreement, Mortgage, Note, Assignment of Rents and other Loan Documents shall remain in full force and effect in accordance with their original terms.

16. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

MORTGAGOR:

MER KEDZIE, LLC, an Illinois limited liability company


By: 

Monte C. Strusiner

Its: Manager

MORTGAGEE:

BANK ONE, ILLINOIS, NA, a national banking association

By: 
Its: AVP

Property of Cook County Clerk's Office

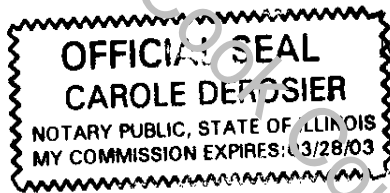
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I HEREBY CERTIFY that on this 30th day of March, 2000, before me personally appeared Monte C. Strusiner, Manager of MER KEDZIE, LLC, an Illinois limited liability company to me known to be the same person who signed the foregoing instrument as his free act and deed as such Manager for the use and purpose therein mentioned, and that the said instrument is the act and deed of said company.

WITNESS my signature and official seal at Northbrook in the County of Cook and State of Illinois, the day and year last aforesaid.

(NOTARY SEAL)

Carole DeRosier
Notary Public



My Commission Expires: 3/28/03

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO
HEREBY CERTIFY, that THOMAS F. PORZAK, JR, ASST. VICE PRESIDENT
of BANK ONE, ILLINOIS, NA, personally known to me to be the same person whose name is
subscribed to the foregoing instrument as such THOMAS F. PORZAK appeared before me
this day in person and acknowledged that he signed and delivered the said instrument as his own
free and voluntary act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 31st day of MARCH,
2000.

(NOTARY SEAL)

Priscilla Travis
Notary Public

My Commission Expires: 6-19-2001



EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

LOTS 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12 AND 13 IN BLOCK 1 IN WILLIAM E. HATTERMAN'S IRVING PARK BOULEVARD SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 4 IN BLOCK 1 IN WILLIAM E. HATTERMAN'S IRVING PARK BOULEVARD SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN NOS.: 13-24-100-005;
13-24-100-006;
13-24-100-007;
13-24-100-008;
13-24-100-009;
13-24-100-003;
13-24-100-004;
13-24-100-035;
13-24-100-036

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