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Cook County Recorder 86.50



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**SECOND  
MODIFICATION OF LOAN DOCUMENTS**

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**THIS SECOND MODIFICATION OF LOAN DOCUMENTS** (this "Agreement") is made effective as of the 1<sup>st</sup> day of November, 2002, by and among **PARKWAY CORPORATE PLACE, L.L.C.**, a Delaware limited liability company ("Borrower"), **MARVIN ROMANEK**, an individual ("Guarantor") and **FIFTH THIRD BANK (CHICAGO)**, a Michigan banking corporation, its successors and assigns (formerly known as Old Kent Bank, a national banking association) ("Lender").

**RECITALS:**

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Twenty Million Nine Hundred Thousand and No/100 Dollars (\$20,900,000) pursuant to the terms and conditions of a Construction Loan Agreement dated as of September 28, 1999 between Borrower and Lender, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated September 28, 1999, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

**This document prepared by and after recording return to:**

Michael S. Kurtzon, Esq.  
Schwartz, Cooper, Greenberger &  
Krauss, Chartered  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601

**Permanent Index Number:**

07-13-101-013

**Address of Property:**

915, 935 and 955 National Parkway  
Schaumburg, Illinois

B. The Note is secured by, among other things, (i) that certain Construction Mortgage and Security Agreement with Assignment Rents dated September 28, 1999 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on October 18, 1999, as Document No. 99976839 (the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto (the "Property"), (ii) that certain Assignment of Rents and Leases dated September 28, 1999, from Borrower to Lender and recorded in the Recorder's Office on October 10, 1999, as Document No. 99976840 (the "Assignment of Leases"), (iii) that certain Security Agreement dated September 28, 1999 from Borrower to Lender (the "Security Agreement"), (iv) that certain Environmental Indemnity Agreement dated September 28, 1999 from Borrower and Guarantor to Lender (the "Indemnity Agreement"), and (v) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Security Agreement, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty of Payment dated September 28, 1999 from Guarantor to Lender (the "Payment Guaranty") and a Guaranty of Completion from Guarantor to Lender dated September 28, 1999 (the "Completion Guaranty," and together with the Payment Guaranty, the "Guaranties").

D. The Loan Documents were amended by a Modification of Loan Documents between Borrower and Lender dated May 1, 2002 and recorded June 3, 2002 in the Recorder's Office as Document No. 0020619371 and re-recorded on June 14, 2002 as Document No. 0020671147 (the "Modification") which extended the Conversion Date (as defined in the Loan Agreement) and the Maturity Date (as defined in the Note) to November 1, 2002 and amended and restated Section 2(a)(ii) of the Note.

E. The conditions required pursuant to paragraph 4.11 of the Loan Agreement to convert the Loan from a construction loan to a mini-term loan have not been fulfilled, and, accordingly, the Note matured as of the date hereof.

F. The Borrower has requested that Lender agree to restructure the Loan and to extend the Maturity Date to December 15, 2005. Lender is willing to agree to restructure the Loan and extend the Maturity Date to December 15, 2005 on the terms and conditions set forth in this Agreement.

**AGREEMENTS:**

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date; Extended Maturity Date.** The Maturity Date of the Loan is hereby extended to December 15, 2005.

2. **Splitting of Loan.** The outstanding principal balance of the Loan as of the date hereof is \$19,483,802. The stated principal amount of the Loan equals \$20,900,000. The Loan is hereby split into two portions designated as "Facility A" and "Facility B". As of the date hereof, the principal amount of Facility A shall equal \$19,483,802 and the principal amount of Facility B shall equal \$1,416,198. The Borrower acknowledges and agrees that Facility A has been fully disbursed. Facility B shall be disbursed in the manner provided in the Loan Agreement, as amended by this Agreement.

3. **Notes.** The Note shall be split into two separate notes, one such note to evidence Facility A (the "Facility A Note") and the other to evidence Facility B (the "Facility B Note", and with the Facility A Note, the "Replacement Notes"). Concurrently herewith, Borrower shall execute and deliver to Lender the Replacement Notes. The Replacement Notes replace the Note in its entirety. Upon delivery of the executed Replacement Notes to Lender, Lender shall cancel the Note and deliver it to Borrower. All references to "Note" in the Loan Documents shall refer to the Replacement Notes.

4. **Mortgage.** Concurrently herewith, the Mortgage is being modified so that it secures only the repayment of the portion of the Loan evidenced by the Facility A Note. The Mortgage is amended as follows:

(a) All references to "Note" in the Mortgage shall mean the Facility A Note.

(b) An Event of Default (as defined in the Junior Mortgage) under the Facility B Note or Junior Mortgage shall constitute an Event of Default under the Mortgage.

5. **Junior Mortgage.** Concurrently herewith, Borrower is executing and delivering to Lender that certain Amended and Restated Junior Construction Mortgage and Security Agreement with Assignment of Rents (the "Junior Mortgage") which secures repayment of the portion of the Loan evidenced by the Facility B Note.

The Mortgage and Junior Mortgage are jointly referred to as the "Mortgages". All references in the Loan Documents (other than in the Mortgage and Junior Mortgage) to the term "Mortgage" shall be deemed to refer to the "Mortgages".

6. **Assignment of Leases.** Concurrently herewith, the Assignment of Leases is being modified so that it secures only the repayment of the portion of the Loan evidenced by the Facility A Note. The Assignment of Leases is modified as follows:

(a) All references to "Note" in the Assignment of Leases shall mean the Facility A Note.

(b) An Event of Default under the Facility B Note, Junior Mortgage or other Loan Documents shall constitute an Event of Default under the Assignment of Leases.

7. **Junior Assignment of Rents and Leases.** Concurrently herewith, Borrower is executing and delivering to Lender that Junior Assignment of Rents and Leases (the "Junior Assignment") which secures repayment of the portion of the Loan evidenced by the Facility B Note.

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The Assignment and Junior Assignment are jointly referred to as the "Assignments". All references in the Loan Documents (other than in the Assignment and Junior Assignment) to the term Assignment shall be deemed to refer to the Assignments.

8. **Loan Agreement.** The Loan Agreement is amended as follows:

(a) All references to "Note" shall mean the "Replacement Notes".

(b) The definition of Note is deleted and replaced with the following:

"Notes: The Facility A Note and the Facility B Note, collectively."

(c) The following definitions are added:

"Facility A Note: The Promissory Note dated as of November 1, 2002 in the principal amount of \$19,483,802 executed by Borrower evidencing Facility A.

"Facility B Note: The Promissory Note dated as of November 1, 2002 in the principal amount of \$1,416,198 executed by Borrower evidencing Facility B.

"Facility A: The portion of the Loan in the amount of \$19,483,802.

"Facility B: The portion of the Loan in the amount of \$1,416,198."

(d) The definition of Loan Amount is amended to read as follows:

"An amount not to exceed \$20,900,000 of which \$1,416,198 shall be allocated to Tenant Improvements."

(e) The definition of "Mini-Perm Term" is deleted. There shall be no mini-  
perm term.

(f) The definition of Due Date is amended to read as follows:

"December 15, 2005."

(g) The definition of Construction Loan is deleted.

(h) Section 4.11 is deleted.

(i) The definition of Conversion Date is deleted.

(j) The definition of Mortgage is replaced by the following:

"Mortgages: Jointly, (i) that certain Construction Mortgage and Security Agreement with Assignment of Rents dated September 28, 1999 and recorded in the Cook County Recorder of Deeds in Cook County, Illinois

on October 18, 1999 as Document No. 99976839, as amended from time to time, securing repayment of the Facility A Note and (ii) that certain Junior Construction Mortgage and Security Agreement with Assignment of Rents dated December 23, 2002 securing repayment of the Facility B Note, each from Borrower to Lender.”

(k) All references to “Old Kent Bank” are hereby changed to “Fifth Third Bank (Chicago)”.

(l) The notice address for Lender in Section 12.1 and in all other Loan Documents is changed to the following:

“Fifth Third Bank (Chicago)  
1701 Golf Road  
Tower 1 - 7th Floor  
Rolling Meadows, Illinois 60008  
Attention: James Beckett  
Vice President  
Facsimile: (847) 871-6051

With copy to: Schwartz, Cooper, Greenberger & Krauss, Chtd.  
180 N. LaSalle, Suite 2700  
Chicago, Illinois 60601  
Attention: Michael S. Kurtzon, Esq.  
Facsimile: (312) 782-8416”

(m) The reference to the figure “\$26.00” in Section 4.3(e)(ii) is changed to “\$18.00.”

9. **Pledge of Account.** Borrower hereby pledges to, and grants to Lender a first security interest in all of Borrower’s right, title and interest in Borrower’s Accounts Numbered 7508755126 and 7517633520 (the “Accounts”) with Lender. Borrower expressly grants to Lender a right to offset any amounts in the Accounts against any of Borrower’s Obligations (as defined in the Loan Agreement).

10. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgages and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgages) under the Notes, the Mortgages or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Notes, the Mortgages or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

11. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Near North National Title Corporation to issue (i) an endorsement to Lender's title insurance policy No. N9902031 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage as amended by this Agreement and (ii) a lender's title insurance policy insuring the second priority of the lien of the Junior Mortgage, each subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

12. **Reaffirmation of and Amendment to Guaranty.** Guarantor ratifies and affirms the Guaranties and the Indemnity and agrees that the Guaranties and the Indemnity are in full force and effect following the execution and delivery of this Agreement. Guarantor agrees that the Guaranty of Payment is amended as follows:

(a) The amount of principal indebtedness guaranteed under Section 2 of the Payment Guaranty is increased to \$2,500,000 and the amount of interest guaranteed thereunder shall be interest on \$2,500,000; and

(b) Section 11 of the Guaranty of Payment is deleted.

The representations and warranties of Guarantor in the Guaranties and the Indemnity are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranties and the Indemnity continue to be the valid and binding obligations of Guarantor, enforceable in accordance with their respective terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranties and the Indemnity.



13. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Loan Agreement" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Loan Agreement and the other Loan Documents as amended hereby and any references to the "Note" or "Mortgage" shall be deemed to refer to the Notes and Mortgages. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

**LENDER:**

**FIFTH THIRD BANK (CHICAGO)**

By: J.C. Beckett  
Name: JAMES. C. BECKETT  
Title: VICE PRESIDENT

**BORROWER:**

**PARKWAY CORPORATE PLACE,  
L.L.C., a Delaware limited liability  
company**

By: Marvin M. Romanek  
Name: MARVIN M. ROMANEK  
Title: Manager

**GUARANTOR:**

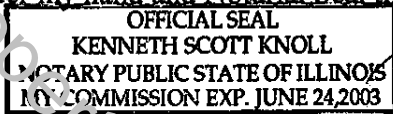
Marvin M. Romanek  
**MARVIN ROMANEK**

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STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

I Kenneth Scott Knoll, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that James C. Beckett VP of **FIFTH THIRD BANK (CHICAGO)**, 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 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 23 day of December, 2002.



Kenneth Scott Knoll

Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

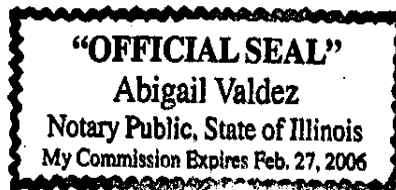
I ABIGAIL VALDEZ, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that MARVIN M. ROMANEK MANAGES of **PARKWAY CORPORATE PLACE, L.L.C.**, a Delaware limited liability company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered 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 23rd day of December, 2002.

Abigail Valdez

Notary Public

My Commission Expires: 12-27-06



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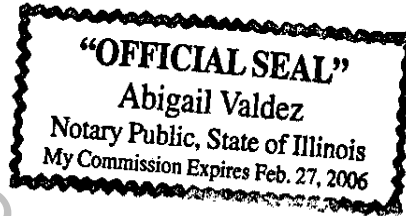
STATE OF ILLINOIS     )  
                                          )  
COUNTY OF Cook     ).ss

I ABIGAIL VALDEZ, a Notary Public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that **MARVIN ROMANEK**, 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 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 23<sup>rd</sup> day of December, 2002.

Abigail Valdez  
Notary Public

My Commission Expires: 02-27-06



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EXHIBIT A

THE PROPERTY

Lot 2 in Oxford Capital Partner's Resubdivision, being a resubdivision of Lot 1 in Anderson's Third Resubdivision, a resubdivision of part of Lot 2 in Anderson's Second Resubdivision, a resubdivision of Anderson's Resubdivision of part of Lot 11 in Anderson's Woodfield Park, a subdivision of part of the Northwest ¼ of Section 13, Township 41 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 07-13-101-013

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