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2003-03-11 08:15:46
Cook County Recorder 44.00

This document prepared by
and after recording
return to:

Edward J. Grzelakowski
Kemp & Grzelakowski, Ltd.
1900 Spring Road, Suite 500
Oak Brook, IL 60523



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THIRD LOAN MODIFICATION AGREEMENT

THIS THIRD LOAN MODIFICATION AGREEMENT (this "Agreement") is made as of January 1, 2003, by and between MADISON MANOR 2 DEVELOPMENT, L.L.C., an Illinois limited liability company ("Borrower") having an address of 937 W. Randolph, Suite 2, Chicago, Illinois, 60607 and COMMERCIAL LOAN CORPORATION, an Illinois corporation ("Lender") having an address of 2210 Midwest Road, Suite 211, Oak Brook, Illinois, 60523.

RECITALS:

A. Lender has heretofore made loans to Borrower in the aggregate amount of Eleven Million Two Hundred Fifty Thousand (\$11,250,000.00) Dollars, or so much thereof as may be advanced from time to time (the "Loan"), pursuant to that certain Commercial Construction Loan and Security Agreement made between Lender and Borrower, dated as of April 24, 2001 (the "Loan Agreement"), as amended by First Loan Modification Agreement dated May 23, 2001 and Second Loan Modification Agreement dated October 1, 2002. The Loan is evidenced by that certain Secured Promissory Note dated April 24, 2001 from Borrower to Lender in the principal amount of Ten Million Five Hundred Thousand (\$10,500,000.00) Dollars ("Note A") and that certain Secured Promissory Note dated May 23, 2001 from Borrower to Lender in the principal amount of Seven Hundred Fifty Thousand (\$750,000.00) Dollars ("Note B") (Note A and Note B herein collectively referred to as the "Note") and secured or guaranteed by, among other things (i) that certain Mortgage, Assignment of Leases and Rents and Security Agreement dated April 24, 2001, made by Borrower for the benefit of Lender (the "Mortgage"), recorded on May 16, 2001, with the Cook County Recorder's Office as Document No. 0010410576, encumbering the property legally described on Exhibit A attached hereto (the "Property"), (ii) that certain Guaranty dated April 24, 2001, executed by Robert T. Berry and that certain Guaranty dated April 24, 2001 executed by

BOX 333-CT

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Enrico F. Plati, both in favor of Lender (collectively the "Guaranties"); (the Loan Agreement, Note and the Mortgage and every other document evidencing or securing the Loan as amended from time to time, are collectively referred to herein as the "Loan Documents").

B. Borrower and Lender desire to amend the Loan Documents in the manner hereinafter set forth in order to extend the maturity date of the Loan to April 1, 2003 and make other modifications to the Loan Documents.

NOW, THEREFORE, in consideration of the foregoing facts (which are hereby incorporated in and made a part of the Agreement), the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree that, notwithstanding anything to the contrary contained in the Loan Documents, the Loan Documents are hereby revised as hereinafter provided:

1. **Extension of Maturity Date.** Borrower has requested and Lender has agreed to extend the maturity date of the Loan to April 1, 2003 subject to the terms hereof. Borrower and Lender agree that the Loan Agreement shall be modified as follows:

(a) Section 2.2 of the Loan Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

2.2. Lender agrees, subject to the terms and conditions herein contained, to make advances to Borrower in an aggregate principal amount at any one time outstanding, up to but not exceeding ELEVEN MILLION TWO HUNDRED FIFTY THOUSAND (\$11,250,000.00) DOLLARS (hereinafter referred to as the "Loan"). Within the borrowing limits of the Loan, Borrower may borrow and repay (but may not re-borrow), at any time and from time to time from the date hereof until April 1, 2003, at which time all of Borrower's Liabilities, unless renewed pursuant to Paragraph 2.8 hereof, or unless otherwise sooner due and payable by Borrower to Lender, shall be due and payable by Borrower to Lender. As evidence of Borrower's indebtedness under the Loan, Borrower shall execute a note in the amount of \$10,500,000.00 in the form of the note attached hereto as Exhibit "A" ("Note A") and a Note in the amount of \$750,000.00 in the form of the Note attached hereto as Exhibit "B" ("Note B"), (Note A and Note B herein collectively referred to as the "Note"). The Note shall bear interest at a daily rate equal to the daily rate equivalent of the Prime Rate plus three fourths of one (0.75%) percent per annum (the "Note Rate"), computed on the basis of a 360-day year and charged for actual days elapsed. The Note Rate shall fluctuate hereafter from time to time concurrently with and in an amount equal to each increase or decrease in the Prime Rate. Interest on the Loan shall be due and payable by Borrower to Lender monthly, in arrears, on the first day of each month, commencing May 1, 2001, or as billed by Lender, at Lender's principal place of business or at such other place as Lender shall designate to Borrower in writing.

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(b) Section 2.5 of the Loan Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

2.5 Lender's commitment to fund the Loan under this Agreement shall expire on the earliest of (i) April 1, 2003, or (ii) the date on which Borrower's Liabilities hereunder mature under the terms of any note given by Borrower to Lender, or (iii) when the outstanding principal balance of the Loan reaches Zero (\$0.00) Dollars, or (iv) the occurrence of an Event of Default pursuant to Paragraph 7.1 hereof.

(c) Section 2.8 of the Loan Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

2.8 This Agreement shall be in effect until April 1, 2003, whereupon it shall automatically terminate (the "Original Term") unless renewed ("Renewal Term") by written agreement of the parties. Lender may also terminate this Agreement upon an Event of Default or pursuant to Paragraph 7.5 hereof.

2. **Mortgage.** The Mortgage is hereby modified to reflect the extension of the maturity date of the Loan to April 1, 2003.

3. **Conditions Precedent.** This Agreement shall be effective only upon fulfillment by Borrower of the condition that Borrower pay to Lender, upon execution of this Agreement, an extension fee of Twenty-Eight Thousand One Hundred Twenty-Five and 00/100ths (\$28,125.00) Dollars and on the further condition that Borrower shall enter into, execute and/or deliver to Lender such additional due diligence items, documents, certificates, statements and agreements as Lender may require in its reasonable discretion.

4. **Expenses.** Contemporaneously with the execution and delivery hereof, Borrower shall pay, or cause to be paid, all closing costs and expenses, including without limitation, renewal fees, points, attorneys' fees and title charges, incurred in connection with this Agreement and the transactions contemplated hereby.

5. **Acknowledgements.** Borrower hereby acknowledges that (i) as of the date hereof, Borrower has no defense, offset or counterclaim with respect to the payment of any sum owed to Lender, or with respect to any covenant in the Loan Documents; (ii) Borrower hereby renounces and ratifies all representations, warranties and agreements made by it in and upon the execution and delivery of the Note and other Loan Documents, as applicable; (iii) Lender, on and as of the date hereof, has fully performed all obligations to Borrower which it may have had or has on and as of the date hereof; and (iv) by entering into this Agreement, Lender does not waive any condition or obligation in the Loan Documents.

6. **No Impairment.** Nothing herein shall impair the Note or the other Loan Documents or in any way alter, waive, annul, vary or affect any provision, condition or covenant therein contained, except as expressly herein provided, nor affect or impair any right, power or remedy of Lender, it being the intention of the parties hereto that the terms and provisions of the Note and the other Loan Documents shall continue in full force and effect, except as expressly modified hereby,

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if at all.

7. **Defined Terms.** All capitalized terms used herein but not defined herein which are defined in the Loan Agreement shall have the same meaning for the purposes hereof as they do for purposes of the Loan Agreement.

8. **Ratification.** The Loan Documents, as expressly modified and amended by this Agreement, shall continue in full force and effect, and the Loan Documents as thus modified and amended are hereby ratified, confirmed and approved.

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

10. **Further Amendment.** No extension, change, modification or amendment of any kind or nature whatsoever to or of this Agreement shall be made or claimed by either party, and no notice of any extension, change, modification or amendment made or claimed by either party shall have any force or effect whatsoever, unless the same shall be reduced to writing and signed both the parties hereto.

11. **Counterparts.** This Agreement may be executed in counterparts and it is the intention of the parties hereto that any executed counterpart shall constitute the agreement of the parties and that all of the counterparts shall together constitute one and the same agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Third Loan Modification Agreement to be signed by their duly authorized representative as of the date and year first above written.

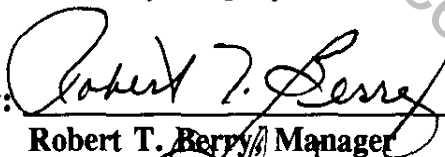
LENDER:

BORROWER:

COMMERCIAL LOAN CORPORATION,
an Illinois corporation

MADISON MANOR 2 DEVELOPMENT, L.L.C., an Illinois limited liability company

By: 

By: 
Robert T. Berry, Manager

Name: Peter M. Hueser

By: 
Enrico F. Plati, Manager

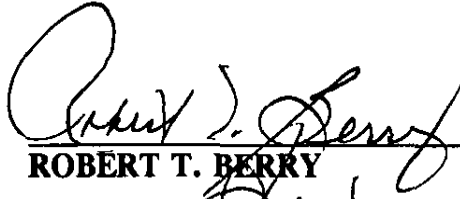
Its: President

CONSENT

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Each of the undersigned, as Guarantors of the Loan, hereby acknowledges and consents to the Third Loan Modification Agreement and hereby ratifies and confirms their obligations under their respective Guaranty dated April 24, 2001, as of the date of the Third Loan Modification Agreement.



ROBERT T. BERRY



ENRICO F. PLATI

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certifies that **ROBERT T. BERRY**, whose name as Manager of **MADISON MANOR 2 DEVELOPMENT, L.L.C.**, an Illinois limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and Official seal this 28th day of January, 2003.



Lisa Mancini
Notary Public

My Commission Expires: 5/24/03

(Seal)

Notary Public in and for
State of Illinois

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certifies that **ENRICO F. PLATI**, whose name as **Manager of MADISON MANOR 2 DEVELOPMENT, L.L.C.**, an Illinois limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and Official seal this 28th day of January, 2003.



(Seal)

Lisa Mancini
Notary Public

My Commission Expires: 5/24/03

Notary Public in and for
State of Illinois

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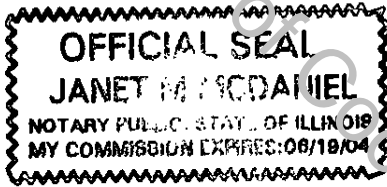
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certifies that **PETER M. HUESER**, whose name as President of **COMMERCIAL LOAN CORPORATION**, an Illinois corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and Official seal this 28 day of January, 2003.

(Seal)



Janet M. McDaniel
Notary Public

My Commission Expires: 6-19-04

Notary Public in and for the
State of Illinois

COOK County Clerk's Office

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Lisa Mancini, a Notary Public, in and for said County, in said State, **DO HEREBY CERTIFY** that **ROBERT T. BERRY**, 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 severally acknowledged to me that he signed and delivered said instrument as his own free and voluntary act, for the use and purposes set forth therein.

Given under my hand and Official seal this 28th day of January, 2003.



Lisa Mancini
Notary Public

My Commission Expires:
5/24/03

(Seal)

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Lisa Mancini, a Notary Public in and for the County and State aforesaid, **DO HEREBY CERTIFY** that **ENRICO F. PLATI**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day and in person and severally acknowledged to me that he signed and delivered said instrument as his own free and voluntary act, for the use and purposes set forth therein.

Given under my hand and Official seal this 28th day of January, 2003.



Lisa Mancini
Notary Public

My Commission Expires:
5/24/03

(Seal)

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EXHIBIT A

Legal Description

Lots 1 to 10, inclusive, in William Hale Thompson's Subdivision of Lots 17 to 26, inclusive, in S. F. Gale's Subdivision of Block 52 of Carpenter's Addition to Chicago, a Subdivision of the Southeast 1/4 of Section 8, Township 39 North, Range 14, East of the Third Principal Meridian in Cook County, Illinois.

ADDRESS: 900-920 W. Madison, Chicago, Illinois

P.I.N.: 17-08-443-004-0000

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