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Cook County Recorder 38.50



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THIS FIRST AMENDMENT WAS  
PREPARED BY  
AND AFTER RECORDING MAIL TO:

John F. Mahoney, Esq.  
Chuhak & Tecson, P.C.  
30 South Wacker Drive  
Suite 2600  
Chicago, Illinois 60606



FIRST AMENDMENT TO CONSTRUCTION MORTGAGE

THIS FIRST AMENDMENT TO CONSTRUCTION MORTGAGE (the "Amendment"), dated as of March 15, 2003, is made to that certain Construction Mortgage, dated as of November 15, 2000, entered into between RAVEN THEATRE COMPANY (TIN: 36-3266831) ("Mortgagor") and Uptown National Bank of Chicago (the "Mortgagee").

RECITALS

A. Mortgagee is the holder of a certain Note dated as of November 15, 2000 made by Mortgagor payable to the order of Mortgagee in the original principal amount of One Million One Hundred Thousand Dollars (\$1,100,000) (the "Old Note").

B. Mortgagee has agreed to extend a term loan to Mortgagor in the aggregate principal amount of Three Hundred and Seventy-Five Thousand and 00/100 Dollars (\$375,000.00) ("Mortgage Loan") evidenced by the Note dated this date in a like amount, the terms of which are incorporated herein by this reference (the "Note").

C. The Old Note is secured by the certain Construction Mortgage dated November 15, 2000 (the "Mortgage"), recorded November 15, 2000 with the Office of the Cook County Recorder as document no. 00899813, under which Mortgagor has mortgaged to Mortgagee the real estate legally described on Exhibit A attached hereto (the "Mortgaged Property").

D. The Note constitutes a renewal, restatement of and replacement and substitution for the Old Note, but shall not be deemed a payment, settlement or novation of Three Hundred Seventy Five Thousand Dollars (\$375,000.00) of indebtedness of the Old Note.

NOW, THEREFORE, the parties agree as follows:

1. Note. The Note (as defined in the Recitals) in the principal amount of Three Hundred and Seventy-Five Thousand and 00/100 Dollars (\$375,000.00), executed by Mortgagor and delivered to Mortgagee constitutes the renewal, restatement of, and replacement and substitution for the Old Note, and the payment of the indebtedness evidenced by the Note continues to be secured by the Mortgage. The indebtedness evidenced by the Note is continuing indebtedness, and nothing herein shall be deemed to constitute a payment, settlement or novation of Three Hundred and Seventy-Five Thousand and 00/100 Dollars (\$375,000.00) of the indebtedness evidenced by the Old Note, or to release or otherwise adversely affect any lien,

STEWART TITLE OF ILLINOIS  
NORTH LA Salle STREET, SUITE 1020  
CHICAGO, IL 60602

mortgage or security interest securing such indebtedness or any rights of the Mortgagee against any guarantor, surety or other party primarily or secondarily liable for such indebtedness.

2. Maximum Lien. The section "Maximum Lien" is hereby amended in its entirety as follows: "MAXIMUM LIEN. At no time shall the principal amount of Indebtedness secured by the Mortgage, not including sums advanced to protect the security of the Mortgage, exceed \$750,000."

3. Cross Collateralization. The section "Cross Collateralization" is hereby deleted in its entirety.

4. Construction Loan. The section "Construction Loan" is hereby deleted in its entirety.

5. Maintenance of Insurance. The section captioned "Maintenance of Insurance" is hereby modified by adding "reasonably" after "may" and before "require" in the eighth line thereof.

6. Full Performance. The section captioned "Full Performance" is hereby modified by deleting therefrom "any reasonable termination fee as determined by Lender from time to time" and substituting in its place "all reasonable costs, including filing fees, and expenses, relating to the termination of any lien or security interest granted hereunder."

7. Default in Favor of Third Parties, etc. The sections captioned "Default in Favor of Third Parties," "Breach of Other Agreement," and "Events Affecting Guarantor" are deleted in their entirety and the following sections substituted in their place:

**"EVENT OF DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Mortgage:

**Payment Default.** Mortgagor fails to make any payment when due under the Note.

**Other Defaults.** Mortgagor fails to comply with or to perform any other term, obligation, covenant or condition contained in the Note, this Mortgage or in any of the Related Documents as defined in the Business Loan Agreement dated November 15, 2000 (as amended by the First Amendment of even date herewith) or is in default under any other agreement between Mortgagee and Mortgagor and all applicable and in either case all cure periods have expired.

**Default in Favor of Third Parties.** Mortgagor defaults under any loan, extension of credit, security agreement purchase or sales agreement in favor of any other creditor or person that may materially affect any of Mortgagor's property or Mortgagor's ability to repay the Note or perform Mortgagor's obligations under the Note or any of the Related Documents.

**False Statements.** Any warranty, representation or statement made or furnished to Mortgagee by Mortgagor or on Mortgagor's behalf under the Note, this Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Insolvency.** The dissolution or termination of Mortgagor's existence as a going business, the insolvency of Mortgagor, the appointment of a receiver for any part of Mortgagor's property, any

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assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Mortgagor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Mortgagor or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Mortgagor's accounts, including deposit accounts, with Mortgagee. However, this Event of Default shall not apply if there is a good faith dispute by Mortgagor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Mortgagor gives Mortgagee written notice of the creditor or forfeiture proceeding and deposits with Mortgagee monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Mortgagee, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Change In Control.** Any material change in control of Borrower.

**Adverse Change.** A material adverse change occurs in Mortgagor's financial condition, or Mortgagee reasonably believes the prospect of payment or performance of the Note is impaired.

**Insecurity.** Mortgagee in good faith believes itself insecure.

**Cure Provisions.** If any default, other than a default in payment is curable and if Mortgagor has not been given a written notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Mortgagee, after receiving written notice from Mortgagee demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Mortgagee deems in Mortgagee's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of an Event of Default Mortgagee, at Mortgagee's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Mortgagee shall have the right at its option without notice to Mortgagor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Mortgagor would be required to pay.

**UCC Remedies.** With respect to all or any part of the personal property, Mortgagor shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Mortgagee shall have the right, without notice to Mortgagor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Mortgagee's costs, against the Indebtedness. In furtherance of this right, Mortgagee may require any tenant or other user of the Property to make payments of rent or use fees directly to Mortgagee. If the Rents are collected by Mortgagee, then Mortgagor irrevocably designates Mortgagee as Mortgagor's attorney-in-fact to endorse instruments received in payment thereof in the name of Mortgagor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Mortgagee in response to Mortgagee's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds

for the demand existed. Mortgagee may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Mortgagee in Possession.** Mortgagee shall have the right to be placed as mortgagee in possession or to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The Mortgagee in possession or receiver may serve without bond if permitted by law. Mortgagee's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Mortgagee shall not disqualify a person from serving as a receiver.

**Judicial Foreclosure.** Mortgagee may obtain a judicial decree foreclosing Mortgagor's interest in all or any part of the Property.

**Deficiency Judgment.** If permitted by applicable law, Mortgagee may obtain a judgment for any deficiency remaining in the Indebtedness due to Mortgagee after application of all amounts received from the exercise of the rights provided in this section.

**Other Remedies.** Mortgagee shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

**Sale of the Property.** To the extent permitted by applicable law, Mortgagor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Mortgagee shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Mortgagee shall be entitled to bid at any public sale on all or any portion of the Property.

**Notice of Sale.** Mortgagee shall give Mortgagor reasonable notice of the time and place of any public sale of the Real Property and/or Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

**Election of Remedies.** A decision by Mortgagee to pursue any remedy shall not exclude pursuit of any other remedy, and a decision to make expenditures or to take action to perform an obligation of Mortgagor under this Mortgage, after Mortgagor's failure to perform, shall not affect Mortgagee's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Mortgagee following an Event of Default, or in any way to limit or restrict the rights and ability of Mortgagee to proceed directly against Mortgagor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Indebtedness."

8. Attorneys' Fees; Expenses. The section captioned "Attorneys' Fees; Expenses" is hereby modified by adding "reasonable" after "Lender's" and before "attorneys" in the eighth line thereof, and by adding "reasonable" after "Lender's" and before "legal" in the eighth line thereof and by adding "reasonable" after "including" and before "attorneys" in the ninth line thereof.

9. Note. The section captioned "Note" is hereby amended and restated in its entirety as follows: "Note. The word "Note" means the Note executed by Borrower in the principal amount of \$375,000 dated March 15, 2003, together with all renewals of, extensions of, modifications of refinancings of, consolidations of, and substitutions for the note or credit agreement."

10. Guarantor; Guaranty. The sections "Guarantor" and "Guaranty" are hereby deleted in their entirety.

11. Fees and Expenses of Mortgagee. Mortgagor agrees to pay all out-of-pocket expenses which Mortgagee incurs in connection with the preparation and recording of this Amendment, and all other documents related to this Amendment, any filing fees and recording tax required in connection with the filing of documents necessary to consummate the provisions of this First Amendment, and the fees and expenses of Mortgagee's counsel.

12. Full Force and Effect. Except as expressly modified in this Amendment, the Mortgage shall remain in full force and effect. Mortgagee ratifies and reaffirms the Mortgage, as amended by this Amendment.

13. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

IN WITNESS WHEREOF, Mortgagor has caused First Amendment to Mortgage to be executed as of the day and year first above written.

RAVEN THEATRE COMPANY

By: [Signature]  
Name: Michael Mendian  
Its: EXECUTIVE DIRECTOR

ATTEST: (SEAL)

By: [Signature]  
Name: LISA YASTARZ  
Its: Secretary

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MORTGAGOR'S ACKNOWLEDGMENT

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK )

I, Laura T. Schellenbach, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Michael Menendian and Lisa Yashan, the Executive Director and Secretary respectively, of RAVEN THEATRE CORPORATION, an Illinois corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers, appeared before me this day in person and acknowledge that they signed and delivered such instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes set forth therein.

Given under my hand and Notarial Seal this 14<sup>th</sup> day of March, 2003.

Laura T. Schellenbach  
Notary Public

My Commission expires:

2/21/06, 2003





EXHIBIT A

LEGAL DESCRIPTION

LOTS 36, 37, 38 AND 39 (EXCEPT THAT PART TAKEN FOR WIDENING NORTH CLARK STREET) IN KRANSZ'S FIRST ADDITION TO EDGEWATER IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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14-05-116-002  
14-05-116-003  
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