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Return acknowledgment to:



0402613076

Prepared By and Upon
Recording Return To:

★
Capitol Services, Inc.
P.O. Box 1831 Austin TX 78767
800/345-4647

Doc#: 0402613076
Eugene "Gene" Moore Fee: \$66.50
Cook County Recorder of Deeds
Date: 01/26/2004 12:09 PM Pg: 1 of 7

Michael A. Bedke, Esq.
PIPER RUDNICK LLP
101 East Kennedy Boulevard
Suite 2000
Tampa, Florida 33602

MORTGAGE MODIFICATION AGREEMENT

This **MORTGAGE MODIFICATION AGREEMENT** (this "**Modification**") is made and entered into as of December 31, 2003, by and between **FALCON HOLDINGS, LLC**, a Delaware limited liability company, as successor by merger with Atlanta Franchise Development Company, LLC, a Delaware limited liability company, ("**Borrower**"), and **FMAC LOAN RECEIVABLES TRUST 1997-B** ("**Lender**").

RECITALS:

A. Borrower is the owner in fee simple of that certain real property, situate, lying and being in Cook County, Illinois, as more particularly described in the Mortgage (as defined herein) (the "**Mortgaged Property**").

B. Franchise Mortgage Acceptance Company, LLC ("**Original Lender**") extended to Atlanta Franchise Development Company, LLC ("**AFDC**") a loan in the amount of Two Hundred, Eighty-Two Thousand and 00/100 Dollars (\$282,000.00) (the "**Loan**"), as evidenced by that certain Secured Promissory Note dated March 24, 1997, made by AFDC in favor of Original Lender (the "**Original Note**").

C. The payment of the indebtedness evidenced by the Original Note is secured by, among other things, that certain Mortgage (the "**Mortgage**") dated March 24, 1997, and recorded on May 5, 1997 with the Cook County Recorder of Deeds (the "Public Records") as Document No. 97-315094.

D. Original Lender assigned all of its rights, title, and interest to and under the Original Note and the Mortgage to Lender pursuant to that certain Assignment of Mortgage dated September 29, 1997, and recorded as Document No. 97-809909, of the Public Records.

E. Borrower and AFDC merged pursuant to those certain Articles of Merger certified by the Delaware Secretary of State on November 5, 2001, and Borrower is the surviving entity pursuant thereto.

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F. Borrower has requested, and Lender has agreed, to renew and modify the Loan as evidenced by that certain Renewal, Consolidation, and Bifurcation Secured Promissory Note (the "**Bifurcation Note**") by Borrower in favor of Lender dated the date hereof in the original principal amount of \$2,804,858.68 and that certain Renewal and Bifurcation Secured Clawback Promissory Note by Borrower in favor of Lender dated the date hereof in the original principal amount of \$1,068,225.09 (the "**Clawback Note**"). The Bifurcation Note and the Clawback Note are collectively referred to herein as the "**Renewal Notes**".

G. The Original Note, the Renewal Notes, and the Mortgage, as well as any and all other documents executed in connection therewith or in connection with the Original Note, the Renewal Notes, the Mortgage, and this Modification are hereinafter collectively referred to as the "**Loan Documents**."

H. Borrower and Lender desire to amend the Mortgage and the Loan Documents to reflect the renewal and modification of the Loan as evidenced by the Renewal Notes.

STATEMENT OF AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated herein by this reference.

2. **Fees/Costs**. Borrower agrees to pay and indemnify Lender from and against any and all costs and charges heretofore or hereafter incurred by Lender in connection with this Modification (including, without limitation, its enforcement) including without limitation, title and search fees, legal fees and related costs, recording fees, and intangible and documentary stamp taxes.

3. **Amendment of Loan Documents**.

(a) The Mortgage, and other Loan Documents are hereby modified so as to provide that the terms "Note" and "Obligations" shall hereinafter include, for all purposes, the Renewal Notes and the indebtedness evidenced thereby, and the notes executed by Borrower in favor of Lender, dated on or about the date hereof in the following amounts (all with a maturity date of April 1, 2012): (i) \$670,077.03, (ii) \$1,338,856.20, (iii) \$313,822.04, (iv) \$2,770,403.29, (v) \$302,866.78, (vi) \$406,168.90, (vii) \$259,948.37, (viii) \$1,331,891.70, (ix) \$204,148.52, (x) \$105,889.97, (xi) \$162,568.14, (xii) \$37,372.95, and (xiii) \$83,905.18 (the "**Additional Notes**"). The Renewal Notes and the Additional Notes are collectively referred to herein as the "**Notes**."

(b) The Mortgage and other Loan Documents are hereby modified so as to provide that the repayment terms of the indebtedness secured thereby shall also include the indebtedness evidenced by the Notes.

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(c) The maximum amount which may be secured by the Mortgage shall in no event or under any circumstance exceed \$30,000,000.00.

(d) The Mortgage is hereby supplemented by adding the following as Paragraph 37:

Future Advances. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures as part of the Obligations the payment of all loan commissions, service charges, liquidated damages, attorneys' fees, expenses and advances due to or incurred by Secured Party in connection with the Obligations, all in accordance with the Notes, the Mortgages, the Security Agreements; provided, however, that in no event shall the total amount of the indebtedness secured hereby, including loan proceeds disbursed plus any additional charges, exceed two hundred percent (200%) of the face amount of the Notes. Borrower acknowledges that Secured Party has not bound itself to make advances pursuant to the Notes; however, any future advances shall be a lien from the time this Mortgage is recorded, as provided in the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 (1992), et seq., as amended.

4. **Ratification; No Novation.** Except to the extent modified by this Modification, all terms, conditions and provisions of the Loan Documents shall remain unaltered and in full force and effect and are hereby ratified and re-affirmed. It is the intent of the parties hereto that this Modification shall not constitute a novation of the Original Note, the Mortgage, or other Loan Documents and shall not adversely affect or impair the priority of the Mortgage.

5. **Additional Representations.** Borrower, knowing that Lender, in order to enter into this Modification, is relying on the statements made herein, and after having received the advice of legal counsel, acknowledges that: (i) there exist no defaults by Lender under the Loan Documents; (ii) Borrower does not have any setoffs, counterclaims or defenses against its obligations under the Loan Documents, nor does Borrower have any other claims against Lender; and (iii) Borrower has not been released from any of its obligations owed to Lender nor does this Modification constitute a waiver by Lender of any existing condition of default by Borrower that with the passing of time or the giving of notice would constitute a default by Borrower under the Loan Documents. As partial consideration for this Modification, Borrower does hereby waive any setoff, claim or defense which Borrower now has or might claim to have had, and further agrees not to raise any such setoffs, claims or defenses in any civil proceedings or otherwise.

6. **Release.** To induce Lender to modify the Loan, and otherwise enter into this Modification, Borrower does hereby, for itself and its legal representatives, partners, agents, servants, employees, successors, predecessors and assigns, and after having received the advice of legal counsel, forever releases, acquits and discharges Lender and its officers, directors, stockholders, agents, servants, employees, successors, legal representatives, attorneys, heirs and assigns of and from any and all claims, demands, debts, actions and causes of action which Borrower now has or may hereafter have against Lender and its officers, directors, stockholders, agents, servants, employees, successors, legal representatives, attorneys, heirs and assigns by

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reason of any act, matter, contract, agreement or thing whatsoever up through the date of execution of this Modification.

7. **Indemnification of Costs for Documentary Stamp Taxes and Intangible Taxes.** Borrower unconditionally agrees to indemnify, defend and hold Lender harmless from and against any and all documentary stamp taxes and intangible taxes and other taxes, if any, imposed as a result of the execution, delivery and/or recording of the Notes, any prior notes related to the Notes, the Loan Documents, any loan documents in connection with any prior notes related to the Notes, or this Modification (it being understood that any reference herein to documentary stamp taxes and intangible taxes includes any and all taxes, penalties, interest, attorneys' fees and other costs paid or incurred by the Lender in connection therewith as provided hereinbelow), and Borrower agrees to pay any and all such documentary stamp taxes and intangible taxes upon demand. This indemnification will survive payment in full of the Loan.

8. **Waiver of Trial by Jury.**

THE PARTIES TO THIS MODIFICATION HEREBY ACKNOWLEDGE THAT ANY AND ALL CLAIMS WHICH MAY ARISE UNDER THIS MODIFICATION AND THE LOAN DOCUMENTS ARE MATTERS THAT SHOULD BE ADJUDICATED BY A COURT, WITHOUT A JURY.

THEREFORE, THE PARTIES HEREBY WAIVE TRIAL BY JURY.

NEITHER LENDER NOR BORROWER NOR ANY GUARANTOR NOR ANY SUCCESSOR SHALL SEEK A TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING (WHETHER AT LAW OR IN EQUITY, WHETHER DIRECT OR COLLATERAL, WHETHER IN CONTRACT OR IN TORT) ARISING OUT OF OR OTHERWISE INVOLVING THIS MODIFICATION OR ANY OF THE LOAN DOCUMENTS, A PARTY SHALL NOT SEEK TO CONSOLIDATE ANY ACTION OR PROCEEDING IN WHICH JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION OR PROCEEDING IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION 8 HAVE BEEN FULLY DISCUSSED BY THE PARTIES AND THEIR RESPECTIVE LEGAL COUNSEL AND THE PROVISIONS HEREOF SHALL BE SUBJECT TO NO EXCEPTIONS. THE PARTIES ACKNOWLEDGE THAT NO ONE HAS REPRESENTED THAT THE PROVISIONS OF THIS SECTION 8 OR OF ANY OTHER SECTION OF THIS MODIFICATION OR ANY OF THE LOAN DOCUMENTS WILL NOT BE FULLY ENFORCED.

9. **Severability.** Wherever possible, each provision of this Modification shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidation only, without invalidating the remainder of such provision or the remaining provisions of this Modification.

10. **Construction.** The terms of this Modification shall be construed in accordance with the laws of the state in which the Mortgaged Property is located.

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11. **Successors; Modification Limited**. Except as may be expressly set forth in the Loan Documents, the covenants herein contained shall bind and the benefits and advantages shall inure to the respective heirs, executors, personal representatives, successors and assigns of the parties hereto. This Modification may not be modified or amended other than by an instrument in writing executed with the same formality as this Modification.

12. **Use; Gender**. Whenever used herein, the singular shall include the plural and the use of one gender shall include all genders.

13. **Execution in Counterparts**. This Modification may be executed by the parties in multiple counterparts, which together shall have the full force and effect of a fully executed agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Modification under seal to be effective as of the day and year first above written.

LENDER:

FMAC LOAN RECEIVABLES TRUST 1997-B

By: GMAC Commercial Mortgage Corporation,
a California corporation, as servicer

By: 

James C. Rickard, Vice President

BORROWER:

FALCON HOLDINGS, LLC, a Delaware limited liability company, as successor by merger with Atlanta Franchise Development Company, LLC

By: 

Aslam Khan
President

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STATE OF IL
COUNTY OF COOK


The foregoing instrument was acknowledged before me this 18th day of December, 2003, by James C. Rickard, as Vice President of GMAC Commercial Mortgage Corporation, a California corporation, as servicer of FMAC LOAN RECEIVABLES TRUST 1997-B, on behalf of such entity, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as such Vice President.

(Notarial Seal) 

Lori Ellen Alvarez
Print Name: Lori Ellen Alvarez
NOTARY PUBLIC
State of IL
My Commission Expires: 8/8/05

STATE OF IL
COUNTY OF COOK

The foregoing instrument was acknowledged before me this 19th day of December, 2003, by Aslam Khan, as President of FALCON HOLDINGS, LLC, a Delaware limited liability company, as successor by merger with Atlanta Franchise Development Company, LLC, on behalf of such entity, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as such President.

(Notarial Seal) 

Karen A. Toth
Print Name: _____
NOTARY PUBLIC
State of IL
My Commission Expires: 4-15-07

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Exhibit "A"

LEGAL DESCRIPTION:

PARCEL 1:

LOTS 23, 24 AND 25 IN BLOCK 8 IN KEDZIE LAND ASSOCIATION SUBDIVISION INT HE
NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD
PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 13 AND 14 IN BURLINGTON SECOND SUBDIVISION IN THE EAST 1/2 OF THE
NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD
PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 3220 West 26th Street
Chicago, IL

P.I.N. 16-26-231-041
16-26-231-022

Cook County Clerk's Office