

UNOFFICIAL COPY 08177812

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1998-12-28 15:49:37
Cook County Recorder 45.00



762067/372 Ontario
12/01/98

Prepared by:
Dean E. Parker
Hinshaw & Culbertson
222 North LaSalle Street
Suite 300
Chicago, Illinois 60601

NOTE: THIS SPACE FOR RECORDER'S USE ONLY

76 99 02 6 02 dk

Address: See Exhibits "A" and "B" attached
hereto and made a part hereof
Tax No.: See Exhibits "A" and "B" attached
hereto and made a part hereof

MODIFICATION AGREEMENT

THIS AGREEMENT made this 21st day of December, 1998 ("Date Hereof"), and effective as of the date hereof ("Effective Date"), among AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("Lender") and 372 WEST ONTARIO LIMITED PARTNERSHIP, an Illinois Limited Partnership ("Borrower").

RECITALS:

A. Lender has made a loan to Borrower in the principal amount of ONE MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,600,000.00) ("Principal Balance") pursuant to a note dated December 15, 1997 ("Note"), mortgage of even date therewith ("Mortgage") and other "Loan Documents" including all documents delivered in connection herewith ("Other Loan Documents"). Note, Mortgage and Other Loan Documents together with this Agreement are hereinafter sometimes referred to as "Loan Papers." Principal Balance and all other sums due Lender pursuant to Loan Papers are sometimes hereinafter referred to as "Indebtedness".

B. Mortgage conveys the land and improvements legally described on Exhibit "A" attached hereto and made a part hereof ("Original Mortgaged Premises"), recorded in the office

BOX 333-CTI

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of the Recorder of Deeds of Cook County, Illinois ("Recorder's Office") as Document Number 97985311.

C. Borrower has requested that the principal amount of the Indebtedness be increased by an additional \$250,000.00 and Lender has agreed based upon the terms and conditions set forth herein, including, without limitation, that a first security interest in the property described on Exhibit B ("Additional Mortgage Premises") be granted secure Indebtedness [Original Mortgage Premises and Additional Mortgage Premises, together "Mortgage Premises"];

NOW, THEREFORE, in consideration of the payments made and to be made by Borrower, as hereinafter provided, and the performance of the terms, covenants, conditions and agreements hereafter set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, IT IS HEREBY AGREED AS FOLLOWS:

1. WARRANTIES AND REPRESENTATIONS: Borrower represents and warrants as follows (collectively "Warranties and Representations"):

- a. the execution and delivery of Loan Papers were duly authorized;
- b. Loan Papers and each of the covenants, conditions and agreements contained therein are in full force and effect, are the valid and legally binding obligations of Borrower, as the case may be, and are free from all legal and equitable defenses, offsets and counterclaims;
- c. except for Bizintel Software, Inc., no person, firm or corporation has or claims any interest in Original Mortgage Premises which does not appear in loan policy Number 7699026 dated December 31, 1997 ("Loan Policy") issued by Chicago Title Insurance Company, nor is there any unrecorded deed, deed of trust, mortgage or other conveyance or any undelivered bill of sale, assignment or instrument of transfer relating thereto and Borrower holds title to Additional Mortgage Premises free and clear of any liens, easements and other encumbrances except those which may be expressly approved by Lender;
- d. no part of Land and Improvements is in receivership nor is any application for receivership pending and no petition in bankruptcy has been filed by or against Borrower;
- e. the only parties entitled to possession of Original Mortgage Premises, or any part thereof, are Borrower and tenants pursuant to leases which are subordinate to Loan Papers; the only parties entitled to possession of Additional Mortgage Premises are Borrower, tenants and occupants of the monthly parking spots.

- f. real estate taxes assessed against Mortgage Premises have been paid in full through 1997 tax year (payable in 1998); and
- g. there are no agreements, state of facts or circumstances presently existing which, with or without the service of notice, passage of time, or both, would grant to Borrower the right to refuse to make or delay the payments or otherwise perform the terms, covenants, conditions and agreements required pursuant to Loan Papers.

2. ACKNOWLEDGMENT OF AMOUNTS DUE AS OF EFFECTIVE DATE: REDUCTION OF PRINCIPAL BALANCE TO AMOUNTS DUE: As of Date Hereof, the amount of Principal Balance owed Lender is ONE MILLION FIVE HUNDRED SEVENTY-ONE THOUSAND FIVE HUNDRED FORTY-TWO AND NO/100 DOLLARS (\$1,571,542.00). No further undisbursed amounts are available for disbursement.

3. INCREASED INDEBTEDNESS:

- a. Concurrent with the execution of this Agreement, Borrower will execute a note of even date herewith with this Agreement in favor of Lender in the principal amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) in form and content satisfactory to Lender ("Second Note");
- b. The Mortgage and Other Loan Papers are hereby modified to provide for an increase in the maximum principal amount of Loan everywhere it appears (whether in words or in numerals) from One Million Six Hundred Thousand and No/100 Dollars (\$1,600,000.00) to ONE MILLION EIGHT HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED FORTY TWO AND NO/100 DOLLARS (\$1,821,542.00) and Loan Papers are hereby expressly modified to secure payment and performance of all obligations evidenced by Note and by Second Note;
- c. The Payment Guaranty Agreement is hereby modified to increase the maximum obligation of each Guarantor from Five Hundred Twenty Eight and No/100 Dollars (\$528,000.00) to SIX HUNDRED TEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$610,500.00) everywhere it appears in the Payment Guaranty Agreement (whether in words or in numerals).

4. DISBURSEMENT OF INCREASED INDEBTEDNESS:

- a. All of the funds of the Increased Indebtedness shall be disbursed into a cash collateral account with the Lender.

- b. The proceeds, including the interest accrued thereon, from the Increased Indebtedness shall be used to (i) pay the real estate taxes due and owing on the Additional Mortgaged Premises (as defined below); (ii) fund the tenant improvement costs for space leased by Rada Advertising, Inc. and (iii) pay certain soft costs all as approved by Lender, including interest and Lender's Fees.
- c. The proceeds of the Increased Indebtedness shall be disbursed upon receipt and approval by Lender of real estate bills and redemption statements for the real estate taxes due and owing on the Additional Mortgage Premises, certificates from the general contractors certifying completion of the tenant improvements, and bills, invoices or vouchers relative to soft costs.

5. GRANTING CLAUSE, ADDITIONAL SECURITY: Borrower does hereby GRANT, MORTGAGE and CONVEY to Lender (as Mortgagee), its successors and assigns, as additional collateral to secure the payment of all Indebtedness of loans evidenced and secured by Loan Papers in the aggregate principal amount of up to ONE MILLION EIGHT HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED FORTY TWO AND NO/100 DOLLARS (\$1,821,542.00), including, without limitation, payment of all amounts due pursuant to the Note and Second Note, and any replacements, substitutions, modifications and amendments thereof, the property situated in the County of Cook, State of Illinois and legally described on Exhibit B attached hereto together with all other interest and improvements thereon ("Additional Mortgage Premises"); AND TO HAVE AND TO HOLD, FOREVER, MORTGAGER HEREBY RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State of Illinois and any rights of redemption to the fullest extent permitted by law. All other conditions of the Mortgage and other Loan Papers shall apply fully to the property described in Exhibit B as though set forth at length herein.

The Mortgage and other Loan Papers are hereby modified to include the property legally described on Exhibit B attached hereto and incorporated herein.

6. CONDITIONS PRECEDENT TO EFFECTIVENESS: Notwithstanding anything to the contrary, this Modification Agreement shall not be effective until all of the following conditions shall be satisfied:

- a. Guarantors. Concurrently herewith, Howard Conant, Sr., Howard Conant, Jr., and Urban Innovations, Ltd. Shall execute the attached Consent and Amendment to Guaranty; and
- b. Title Endorsement. Borrower shall deliver to Lender satisfactory endorsement to Loan Policy insuring the continued validity and priority of the lien of mortgage as to the Original Mortgaged Premises and insuring the Mortgage, as modified, as a first lien against the Additional Mortgaged

Premises following the recording of this Agreement (subject only to matters set forth in Schedule B of Loan Policy), confirming all endorsements thereto, covering all property set forth in Exhibit A and Exhibit B, and increasing the amount of coverage to include the modified Principal Amount.

7. LENDER'S FEE: Concurrently with the execution of this Modification Agreement and as a condition of the effectiveness hereof, Borrower shall pay to Lender a fee in connection with this Modification Agreement of Two Thousand Five Hundred and No/100 (\$2,500.00).

8. ADDITIONAL PROVISIONS: Concurrently with the execution hereof Borrower shall pay all title and recording charges and other costs and expenses (including attorneys' fees), including the cost of a rate down policy modification endorsement, incurred by Lender by reason of the matters specified herein and the preparation of this Agreement and all other documents necessary and required to effectuate the provisions hereof.

9. FAILURE OR DELAY: No failure by Lender to exercise, or delay by Lender in exercising, any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement, and other Loan Papers are cumulative and not exclusive of each other or of any right or remedy provided by law or in equity. No notice to or demand upon Borrower, shall, in itself, entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of Lender to any other or further action in any circumstance without notice or demand.

10. EFFECTIVENESS: Subject to the terms and conditions set forth herein, this Agreement shall become effective as of Effective Date, concurrently with the execution and delivery hereof by Lender, Borrower and payment to Lender of any fees or concurrent payments required by the terms hereof.

11. CONSTRUCTION: This Agreement shall not be construed more strictly against Lender than against Borrower merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that both Borrower and Lender have had opportunity to contribute substantially and materially to the preparation of this Agreement, and Borrower and Lender each acknowledges and waives any claims contesting the existence and the adequacy of the consideration given by the others in entering into this Agreement.

This Agreement shall be construed in conjunction with other Loan Papers. All terms used herein shall have the meanings ascribed in other Loan Papers unless otherwise defined herein.

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12. **ENTIRE AGREEMENT:** Borrower and Lender each acknowledge that there are no other agreements or representations, either oral or written, express or implied, not embodied in this Agreement, or other Loan Papers, which, together, represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lender and, except to the extent modified herein, the provisions of other Loan Papers are hereby ratified and confirmed.

Nothing contained herein or in other Loan Papers to the contrary notwithstanding shall be deemed to release, affect or impair Indebtedness or the rights of Lender to enforce its remedies pursuant hereto and to other Loan Papers, including, without limitation, the right to pursue any remedy for injunctive or other equitable relief.

IN WITNESS WHEREOF, Lender and Borrower have caused this Loan Modification Agreement to be signed by their respective duly authorized officers and General Partners, respectively, on the day and year first above written.

Lender:

AMERICAN NATIONAL BANK AND
TRUST COMPANY OF CHICAGO

By: *James A. Reichert*
Title: COMMERCIAL BANKING
OFFICER

Borrower:

372 WEST ONTARIO LIMITED
PARTNERSHIP, an Illinois Limited
partnership

By: Urban Innovations, Ltd., an Illinois
corporation, its General Partner

By: *Howard P. Conant, Jr.*
Howard Conant, Jr.,
President

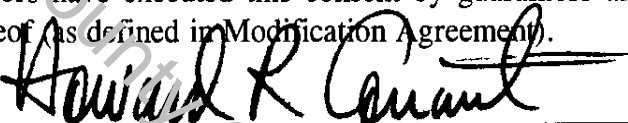
CONSENT AND AMENDMENT OF GUARANTY

Each of the undersigned has previously executed a Payment Guaranty Agreement (the "Guaranty") on December 15, 1997 in favor of Lender, absolutely and unconditionally guaranteeing the due and punctual payment of "Loan as set forth in Loan Papers" and other expenses with a limit on total liability for principal as set forth therein ("Guaranteed Debt"). Each of the undersigned does hereby consent to the execution of the Modification Agreement to which this Agreement is attached ("Modification Agreement"), agree that the "Guaranteed Debt" pursuant to Guaranty shall be deemed to include any obligations evidenced or secured by the Modification Agreement or other Loan Papers (as defined in the Modification Agreement), subject to the limitation on liability as to aggregate principal in the amount of SIX HUNDRED TEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$610,500.00). Guaranty is hereby amended accordingly.

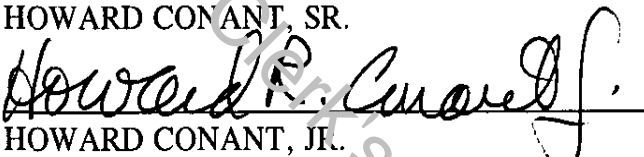
Without limitation of any obligations contained in the Guaranty, Guarantor further agrees to pay, upon demand, all costs and expenses, including reasonable attorneys fees, incurred in connection with the enforcement of Guaranty as amended hereby.

Except as modified hereby, each of the undersigned do hereby ratify and confirm the terms and conditions of Guaranty, as expressly amended hereby and agree that the same shall remain in full force and effect.

IN WITNESS WHEREOF, Guarantors have executed this consent by guarantors and Amendment of Guaranty as of the Date Hereof (as defined in Modification Agreement).

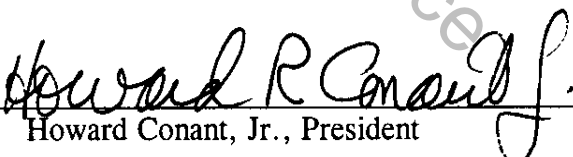


HOWARD CONANT, SR.



HOWARD CONANT, JR.

URBAN INNOVATIONS, LTD

By: 

Howard Conant, Jr., President

LENDER

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Maria I. Parra, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Carrie A. Reichert, Officer of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("Bank") who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Officer, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 23rd day of December, 1998.

Maria I. Parra
Notary Public

My Commission Expires:

4-10-2001



BORROWER

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that before me this day personally appeared Howard Conant, Jr., President of **URBAN INNOVATIONS, LTD.**, an Illinois corporation and general partner for **372 ONTARIO WEST ONTARIO LIMITED PARTNERSHIP**, known to me to be the person whose name is subscribed to this instrument and acknowledged to me that he executed and delivered this instrument as his free and voluntary act and the free and voluntary act of the Corporation, for the uses and purposes set forth above.

GIVEN under my hand and notarial seal this _____ day of _____, 1998.

Notary Public

My Commission Expires:

GUARANTORS

STATE OF ILLINOIS)
) SS.
COUNTY OF)

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that before me this day personally appeared HOWARD CONANT, SR. known to me to be the person whose name is subscribed to this instrument and acknowledged to me that he executed and delivered this instrument as his free and voluntary act, for the uses and purposes set forth above.

GIVEN under my hand and notarial seal this _____ day of _____, 1998.

Notary Public

My Commission Expires:

STATE OF ILLINOIS)
) SS.
COUNTY OF)

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that before me this day personally appeared HOWARD CONANT, JR. known to me to be the person whose name is subscribed to this instrument and acknowledged to me that he executed and delivered this instrument as his free and voluntary act, for the uses and purposes set forth above.

GIVEN under my hand and notarial seal this _____ day of _____, 1998.

Notary Public

My Commission Expires:

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08177812

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that before me this day personally appeared HOWARD CONANT, JR., President of Urban Innovation, Ltd., an Illinois corporation (the "Corporation") known to me to be the person whose name is subscribed to this instrument and acknowledged to me that he executed and delivered this instrument as his free and voluntary act and the free and voluntary act of the Corporation, for the uses and purposes set forth above.

GIVEN under my hand and notarial seal this _____ day of _____, 1998.

Notary Public

My Commission Expires:

Property of Cook County Clerk's Office

EXHIBIT "A"

Legal Description

PARCEL 1:

LOTS 5, 6 AND 7 IN YOUNG'S SUBDIVISION OF PART OF KINGSBURY TRACT IN THE EAST ½ OF THE NORTHWEST ¼ OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1, FOR INGRESS AND EGRESS OVER THAT PART OF THE 18 FOOT PRIVATE ALLEY NORTH AND ADJOINING PARCEL 1 LYING EAST OF THE WESTERLY LINE OF LOT 7 EXTENDED NORTH, EXTENDING EASTERLY 175 FEET, MORE OR LESS, TO THE 18 FOOT PUBLIC ALLEY, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 17-09-127-016-0000

Commonly known address: 372 West Ontario Street
Chicago, Illinois

EXHIBIT "B"

Additional Mortgaged Premises

Legal Description

That part of Block 4 in Assessor's Division of part (South of Erie Street and East of Chicago River) of the East Half of the Northwest Quarter of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, (being Kingsbury Tract and that part formerly Blocks 13, 14, 15 and 16 of Higgins, Law and Company's Addition to Chicago) described as follows: beginning at the intersection of the North line of West Ohio Street with the Easterly line of North Kingsbury Street; Thence North 29° 48' 05" West along the Easterly line of North Kingsbury Street 252.85 feet to the South line of West Ontario Street; Thence South 89° 46' 10" East along the South line of West Ontario Street 29.92 feet; Thence South 38° 52' 45" East 152.75 feet to a point of intersection with a line 50.0 feet Northeasterly and parallel to the Northeasterly line of North Kingsbury Street; Thence South 29° 48' 05" East along the last described line 115.68 feet to the North line of West Ohio Street; Thence North 90° 00' 00" West 57.62 feet to the point of beginning (except that part lying directly above the bottom of the overhead structure of the John Fitzgerald Kennedy Expressway and except that part lying Northwesterly of a line drawn perpendicular to the Northeasterly line of North Kingsbury Street through a point therein 96.0 feet Northwesterly of the intersection of said Northeasterly line with a North line of West Ohio Street) all in Cook County, Illinois.

Permanent Index Number:

Common Address: