

UNOFFICIAL COPY

09062801

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN
TO:

8955/0239 20 001 Page 1 of 11
1999-11-10 16:33:31
Cook County Recorder 41.00

Lawrence M. Gritton
Katz Randall & Weinberg
333 West Wacker Drive
Suite 1800
Chicago, Illinois 60606
(312) 807-3800



KRW File No. 02441.31000

SECOND MODIFICATION OF LOAN DOCUMENTS

THIS SECOND MODIFICATION (hereinafter referred to as "this Modification") is made and entered into as of the 1st day of September, 1999, by **AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO**, not personally but solely as Trustee of Trust No. 600703-07 under Trust Agreement dated November 1, 1998 ("Trust Borrower"), and **MID CITY PLAZA L.L.C.**, an Illinois limited liability company ("Company Borrower"; collectively with Trust Borrower, "Borrower") and **DAVID M. FRIEDMAN** and **MICHAEL FRIEDMAN** (hereinafter referred to collectively as the "Guarantors"), to and for the benefit of **U.S. BANK NATIONAL ASSOCIATION** (hereinafter referred to as "Lender").

RECITALS:

A. Lender has heretofore agreed to extend a loan or loans (hereinafter referred to as the "Credit Facility") to Borrower in the original principal amount of up to **TWENTY-NINE MILLION AND NO/100 (\$29,000,000.00) DOLLARS** as described in a certain Loan Agreement dated February 15, 1999, as modified by Modification of Loan Documents dated as of June 1, 1999 (hereinafter referred to as the "First Modification"; said Loan Agreement, as so modified, is hereinafter referred to as the "Loan Agreement"), between Lender and Borrower (initially capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement).

B. The Credit Facility is further evidenced by a Mortgage Note in said principal amount dated February 15, 1999, made by Borrower and payable to Lender, as modified by the First Modification (said Mortgage Note, as so modified, is hereinafter referred to as the "Note").

C. The Note is secured by, among other things, a Mortgage and Assignment of Leases Rents and Security Agreement dated February 16, 1999, made by Borrower in favor of Lender, and recorded on February 17, 1999 in the Office of the Cook County Recorder of Deeds as Document

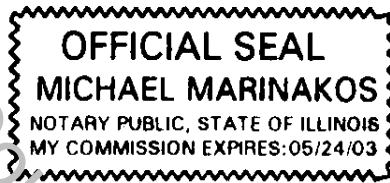
Box 340

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOSEPH F. SOCHACKI, as TRUST OFFICER of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such TRUST OFFICER of said Bank, appeared before me this day in person and acknowledged that he 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 20 day of September, 1999.

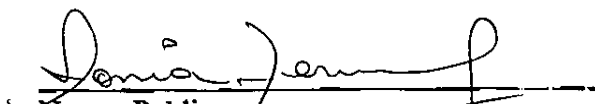

Notary Public



STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Marilyn M. Williams, as Vice President of U.S. BANK NATIONAL ASSOCIATION, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President of said Bank, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as 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 21st day of September, 1999.


Notary Public

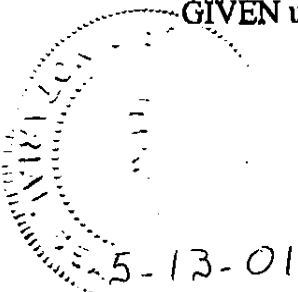


EXHIBIT "A"

Legal Description

THAT PART OF THE SUBDIVISION OF BLOCK 1 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 23, 1880 AS DOCUMENT NUMBER 294287 IN BOOK 15 OF PLATS PAGE 44 DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTH LINE OF LOT 1 OF SAID SUBDIVISION 1.78 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT; THENCE WEST ALONG THE NORTH LINE OF LOTS 1 TO 9 IN SAID SUBDIVISION TO THE NORTHWEST CORNER OF SAID LOT 9; THENCE SOUTH ALONG THE WEST LINE AND SAID WEST LINE EXTENDED OF SAID LOT 9, AND ALONG THE WEST LINE OF LOTS 10 TO 20 IN SAID SUBDIVISION TO THE SOUTHWEST CORNER OF SAID LOT 20, THENCE EAST ALONG THE SOUTH LINE AND SAID SOUTH LINE EXTENDED OF SAID LOT 20, AND ALONG THE SOUTH LINE OF LOT 21 IN SAID SUBDIVISION TO A POINT ON THE WEST LINE OF THE EAST 204.78 FEET OF SAID LOT 21; THENCE NORTH ALONG SAID WEST LINE OF THE EAST 204.78 FEET OF LOT 21 TO A POINT ON THE NORTH LINE THEREOF; THENCE WEST ALONG THE NORTH LINE OF SAID LOT 21 TO A POINT ON THE SOUTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 1 IN SAID SUBDIVISION; THENCE NORTH ALONG SAID EXTENDED LINE AND ALONG THE WEST LINE OF SAID LOT 1 TO A POINT ON THE SOUTH LINE OF THE NORTH 80 FEET OF SAID LOT 1; THENCE EAST ALONG SAID SOUTH LINE 1.78 FEET; THENCE NORTH ALONG THE EAST LINE OF THE WEST 1.78 FEET OF SAID LOT 1 TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

ESTATE A: THE SUB-LEASEHOLD ESTATE CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE SUB-LEASE, EXECUTED BY: LASALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 28, 1982 AND KNOWN AS TRUST NUMBER 105727, AS SUB-LESSOR, AND LASALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED JANUARY 18, 1984 AND KNOWN AS TRUST NUMBER 107550, AS SUB-LESSEE, A MEMORANDUM OF WHICH SUB-LEASE WAS RECORDED JUNE 29, 1984 AS DOCUMENT 27153435 AND RE-RECORDED JULY 2, 1984 AS DOCUMENT 27154881, WHICH SUB-LEASE DEMISES THE LAND AND IMPROVEMENTS FOR A TERM OF YEARS BEGINNING JUNE 29, 1984 AND ENDING AUGUST 31, 2065, AS ASSIGNED TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 11, 1998 AND KNOWN AS TRUST NUMBER 600703-07 PURSUANT TO AN

No. 99160100, as modified by the First Modification recorded on June 28, 1999 as Document No. 99621422 (said Mortgage, as so modified, is hereinafter referred to as the "Mortgage"), encumbering the premises legally described in Exhibit "A" attached hereto and by this reference incorporated herein (hereinafter referred to as the "Property"). The Credit Facility is further secured by certain other documents dated February 15, 1999 executed by Borrower and/or Guarantors, including but not limited to those described in Exhibit "B" attached hereto and by this reference incorporated herein, all as modified by the First Modification (the Mortgage and all such other documents, as so modified, are hereinafter referred to collectively as the "Security Documents").

D. In connection with the Credit Facility, the Guarantors executed Guaranties and Guaranties of Completion each dated February 15, 1999 to and for the benefit of Lender, each as modified by the First Modification which also provides for the consent of the Guarantors thereto (said Guaranties, as so modified, are hereinafter collectively referred to as the "Guaranties").

E. The parties desire to further modify and amend the Loan Agreement, the Note, the Security Documents and the Guaranties (hereinafter referred to collectively as the "Loan Documents") as provided herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The aforesaid Recitals are hereby incorporated into this Modification as if fully set forth in this Paragraph 1.

2. **Amendments to Loan Documents.** All of the Loan Documents are hereby amended as follows, effective as of the date hereof:

- (A) The Acquisition Loan has matured notwithstanding that Borrower has not (i) executed the required construction contract with the General Contractor (hereinafter referred to as the "GMP Contract"), and (ii) furnished to Lender the "comfort letter" from Crowne, both as required under the Loan Agreement;
- (B) The term of the Construction Loan shall commence on September 1, 1999 with repayment of the Acquisition Loan, and the maturity date for the Construction Loan shall be June 1, 2001. In addition to all other conditions precedent to disbursement of the Construction Loan for purposes of other than repayment of the Acquisition Loan, Borrower shall be required to furnish to Lender (i) a fully executed GMP Contract, and (ii) said "comfort letter" from Crowne, both in form and substance required under the Loan Agreement, prior to any further disbursements of Construction Loan proceeds;

- (C) All references in the Loan Documents to the maturity of the Construction Loan shall be deemed to refer to June 1, 2001;
- (D) The Loan Documents shall secure the Note as modified by this Modification; and
- (E) All references in the Loan Documents to any Loan Document shall be deemed to refer to such Loan Document as modified by this Modification.

3. **Consent of Guarantors.** The Guarantors have received and reviewed this Modification and all documents and instruments in connection herewith and hereby consent to the execution and delivery hereof, and agree that their duties, liabilities and obligations under the Guaranties, as modified hereby, shall not in any manner be impaired, discharged or released by the execution and delivery of this Modification and all documents or instruments in connection therewith. Notwithstanding the execution of this Modification, the Guarantors hereby reaffirm and acknowledge their liability and obligations to Lender under the Guaranties, as modified hereby, including the modifications to the Loan Documents set forth herein.

4. **Reaffirmation of Representations and Warranties.** Borrower and the Guarantors (hereinafter referred to collectively as the "Obligors") hereby reaffirm as true and correct in all respects, as of the date hereof, any representations and warranties made by such party as contained in the Loan Documents.

5. **Reaffirmation of Covenants.** The Obligors do hereby reaffirm and agree to perform each and every covenant, condition, obligation and provision of such party set forth in the Loan Documents, as herein modified.

6. **No Vitiating of Liability.** Nothing contained herein shall vitiate or discharge any party's liability under the Loan Documents, as herein modified.

7. **Offsets and Defenses.** The Obligors hereby acknowledge and agree that: (i) as of the date of this Modification, there are no and the Obligors hereby waive all offsets, defenses or counterclaims against Lender arising out of or in any way relating to the Loan Documents, including without limitation any covenant of good faith and fair dealing, (ii) they release and forever discharge Lender, its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors and assigns and all persons, firms, corporations and organizations acting or who have acted in its behalf of and from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which they or any of them may now have or claim to have against Lender or any of the other persons or entities described in this clause (ii) as of the date of this Modification, and whether presently known or unknown, and of every nature and extent whatsoever on account of or in any way touching, concerning, arising out of or founded upon the Loan Documents, and (iii) Lender is not in default under the Loan Documents.

8. **Entire Agreement.** The Obligors acknowledge that: (i) there are no other agreements or representations, either oral or written, express or implied, relating to the amendments to the Loan Documents set forth herein and other provisions hereof that are not embodied in this Modification; (ii) this Modification represents a complete integration of all prior and contemporaneous agreements and understandings of Lender and the Obligors relating to the matters set forth herein, and (iii) all such agreements, understandings, and documents, except for the Loan Documents, are hereby superseded by this Modification.

9. **Full Force and Effect; Inconsistency.** Except as herein modified, the terms, conditions and covenants of the Loan Documents shall remain unchanged and otherwise in full force and effect. In the event of an inconsistency between this Modification and the Loan Documents, the terms herein shall control.

10. **Law of Illinois.** This Modification shall be governed and construed under the laws of the State of Illinois.

11. **Counterparts.** This Modification may be executed in counterparts, all of which, when taken together, shall constitute a single instrument.

12. **Construction.** The words "hereof", "herein", and "hereunder", and other words of a similar import refer to this Modification as a whole and not to the individual Sections in which such terms are used. References to Sections and other subdivisions of this Modification are to the designated Sections and other subdivisions of this Modification as originally executed. The headings of this Modification are for convenience only and shall not define or limit the provisions hereof. Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

13. **No Third Party Beneficiaries.** This Modification shall inure to the sole benefit of the Obligors and Lender. Nothing contained herein shall create, or be construed to create, any right in any person not a party to this Modification.

14. **Trust Borrower Exculpation.** This Modification is executed by American National Bank and Trust Company of Chicago, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said American National Bank and Trust Company of Chicago hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said American National Bank and Trust Company of Chicago personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder, and that so far as said American National Bank and Trust Company of Chicago personally is concerned, the legal holder or holders of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the Property for the payment thereof, by

the enforcement of the liens created by the Mortgage and other Loan Documents, in the manner herein and in the Mortgage and other Loan Documents provided, or by action to enforce the personal liability of the Guarantors.

(SIGNATURES CONTAINED ON THE FOLLOWING PAGE)

Property of Cook County Clerk's Office

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

BORROWER:

MID CITY PLAZA I.L.C., an Illinois limited liability company

By: David M. Friedman
Name: David M. Friedman
Title: Managing Member

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee as aforesaid

By: Joseph F. Sochacki
Name: JOSEPH F. SOCHACKI
Title: TRUST OFFICER

GUARANTORS:

David M. Friedman
David M. Friedman

Michael Friedman
Michael Friedman

LENDER:

U.S. BANK NATIONAL ASSOCIATION

By: Marilynn M. Williams
Name: Marilyn M. Williams
Title: Vice President

Other Security Documents

1. Security Agreement and Collateral Assignment under Land Trust
2. Collateral Assignment of Plans and Specifications, Permits, Developer's Rights, Contracts, Licenses and Agreements
3. Security Agreement
4. UCC-1 and UCC-2 Financing Statements
5. Environmental Indemnity Agreement
6. Collateral Assignment of Franchise Agreement

ASSIGNMENT RECORDED FEBRUARY 17, 1999 AS DOCUMENT NO. 99160098,
EXCEPTING THE BUILDINGS AND IMPROVEMENTS LOCATED ON THE LAND.

ESTATE B: OWNERSHIP OF THE BUILDINGS AND IMPROVEMENTS LOCATED ON THE
LAND.

ESTATE C: FEE SIMPLE TITLE TO THE LAND DESCRIBED IN SCHEDULE A EXCEPTING
THEREFROM THE BUILDINGS AND IMPROVEMENTS LOCATED THEREON.

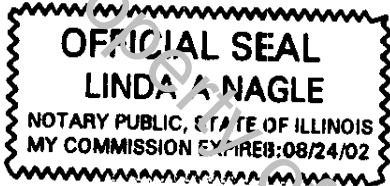
Address: One South Halsted, Chicago, Illinois

PIN: 17-16-100-014

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David M. Friedman, as Manager of Mid City Plaza, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager of said company, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 17th day of September, 1999.



Linda A. Nagle
Notary Public

STATE OF ILLINOIS)
)
COUNTY OF COOK)

On September 17th, 1999, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared David M. Friedman and Michael Friedman, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within Modification and acknowledged to me that the execution of the Modification was their free and voluntary act for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

(SEAL)

Linda A. Nagle
Notary Public in and for the State of Illinois

My commission expires: 8/24/02

