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314 W SUPERIOR Loan Mod
06/25/99

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Cook County Recorder 43.00



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

NOTE: THIS SPACE FOR RECORDER'S USE ONLY

Address: See Exhibit "A" attached hereto and made a part hereof

Tax No.: See Exhibit "A" attached and made a part hereof

FIRST MODIFICATION AGREEMENT

THIS AGREEMENT made as of this 13th day of ~~June~~ ^{July}, 1999 ("Date Hereof"), but effective as of June 30, 1999 ("Effective Date"), among AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("Lender"), 314 WEST SUPERIOR LIMITED PARTNERSHIP, an Illinois Limited Partnership ("Borrower") and URBAN INNOVATIONS, LTD., an Illinois corporation and HOWARD CONANT, JR., jointly and severally (collectively "Guarantors").

RECITALS:

A. Lender has made a construction loan ("Loan") to Borrower in the principal amount of Four Million Eight Hundred Thousand and No/100 Dollars (\$4,800,000.00) ("Principal Balance") which is partially guaranteed by Guarantors, all pursuant to a loan agreement dated December 15, 1997 ("Loan Agreement"), note made by Borrower of even date therewith ("Note"), mortgage of even date therewith ("Mortgage"), and "Other Loan Documents" (as such term is defined in Mortgage). Loan Agreement, Note, Mortgage and Other Loan Documents are

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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 located at 314 West Superior Street, Chicago, Illinois, legally described on Exhibit "A" attached hereto and made a part hereof ("Land and Improvements") as security for Loan, and is recorded in the office of the Recorder of Deeds of Cook County, Illinois ("Recorder's Office") as Document Number 98112277.

C. Borrower and Guarantors have previously received all loan proceeds, have repaid an aggregate of Six Hundred Fifty Thousand and No/100 Dollars (\$650,000.00) of Principal Balance, have re-leased a portion of the Mortgaged Premises and now desire to increase Principal Balance of Loan by Four Hundred Thousand and No/100 Dollars (\$400,000.00) and to extend the final date when Loan amortization will commence to December 1, 1999, and Borrower, Guarantors and Lender have agreed to modify the Loan Papers upon the terms and conditions hereafter set forth.

NOW, THEREFORE, in consideration of the payments made and to be made by Borrower and Guarantors, 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 warrants and represents 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 and Guarantors, as the case may be, and are free from all legal and equitable defenses, offsets and counterclaims;
- c. no person, firm or corporation has or claims any interest in Land and Improvements which does not appear in loan policy number 1401 7692977 dated February 10, 1998, issued by Chicago Title Insurance Company ("Loan Policy") (other than tenants of Land and Improvements pursuant to their respective leases which have been submitted to and approved by Lender ["Leases"]) 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;
- 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 or Guarantors;

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- e. the only parties entitled to possession of Land and Improvements or any part thereof, are Borrower and Guarantors and tenants pursuant to Leases;
- f. real estate taxes assessed against Land and Improvements has been paid in full through 1998 (1st installment); 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 or any of Guarantors 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 JUNE 25, 1999: As of June 25, 1999, the Loan has been fully disbursed and the amount of Principal Balance outstanding and owed Lender is Three Million Two Hundred Eighty Six Thousand Two Hundred Sixteen and 25/100 Dollars (\$3,286,216.25).

3. INCREASE OF LOAN: Loan Papers are modified to provide that the Loan shall be increased by Four Hundred Thousand and No/100 Dollars (\$400,000.00) to a maximum Principal Balance of FOUR MILLION FIVE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$4,550,000.00), which additional funds shall be used to: (a) fund tenant improvement costs of specific leased space upon approval of the "New Lease(s)" (as defined in Loan Agreement) for a maximum of \$175,000.00, (b) creation of an interest reserve in the amount of One Hundred Thousand and No/100 Dollars (\$100,000.00) for use during the period of construction up to December, 1999, and (c) up to \$125,000.00 for leasing commissions to re-lease the 19,492 square feet of vacant space, as approved by Lender. All disbursements shall be subject to the terms and conditions of the Loan Papers.

4. EXTENSION OF FINAL DATE FOR PRINCIPAL AMORTIZATION: Loan Papers are hereby modified, in particular Section 4.02(iii) of Loan Agreement and item (ii)(iii) of Note, to provide that the latest date when monthly principal payments shall commence is revised from July 1, 1999 to **December 1, 1999**.

5. ADDITIONAL PROVISIONS: Concurrently with the execution hereof:

- a. Borrower shall deliver to Lender satisfactory endorsements to Loan Policy insuring the continued validity and priority of the lien of Mortgage, including the additional disbursements, following the recording of this Agreement (subject only to the matters set forth on Schedule B of Loan Policy), confirming all endorsements thereto; and
- b. Borrower shall pay all title and recording charges and other costs and expenses (including attorneys' fees) incurred by Lender by reason of the

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matters specified herein and the preparation of this Agreement and all other documents necessary and required to effectuate the provisions hereof.

6. CONSENT BY GUARANTORS AND AMENDMENT OF GUARANTY: Guarantors in their capacity as "Guarantors" (as such term is defined in Loan Agreement) pursuant to "Payment Guaranty Agreement" and "Completion Guaranty" both dated December 15, 1997 ("Guaranties") do hereby consent to the execution of this Agreement, agree that the Guaranties are hereby amended such that "Loan Agreement" (as defined in the Completion Guaranty and in Payment Guaranty Agreement) shall be deemed to include this Agreement and Guarantors further confirm they hereby primarily guarantee payment of the Indebtedness and all other sums which may become due pursuant to this Agreement upon the same terms and to the same extent as though it were part of the original Indebtedness, and do hereby ratify and confirm the terms and conditions of Guaranties, as amended hereby, and Guarantors further guarantee payment of all costs of collection, including reasonable attorneys fees.

7. 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 or Guarantors, in any instance, shall, in itself, entitle Borrower or Guarantors 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.

8. EFFECTIVENESS: This Agreement shall become effective on Effective Date, concurrently with the execution and delivery hereof by Lender, Borrower and Guarantors.

9. CONSTRUCTION: This Agreement shall not be construed more strictly against Lender than against Borrower and Guarantors 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, Guarantors 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 Loan Agreement or other Loan Papers unless otherwise defined herein.

10. ENTIRE AGREEMENT: Borrower, Guarantors 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

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integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantors and Lender and, except to the extent modified herein, the provisions of other Loan Papers are hereby ratified and confirmed.

THIS LOAN MODIFICATION AGREEMENT is executed by General Partner on behalf of Borrower solely in the exercise of the power and authority conferred upon and vested in it as such General Partner. It is expressly understood and agreed that:

- A. Nothing herein contained shall be construed as establishing any personal liability upon General Partner, personally, to pay Loan and all other sums due and owing thereon ("Indebtedness") or to perform any of the terms, covenants, conditions and agreements herein or therein contained, all such personal liability under this Agreement being hereby expressly waived by Lender; Lender's only recourse against General Partner being against any guaranty(ies) or other undertakings expressly given by General Partner as security for the payment of indebtedness or in connection with Loan ("Other Security").
- B. In the event of the occurrence of a Monetary Default or Non-Monetary Default or upon the maturity of Indebtedness, whether by acceleration, passage of time or otherwise, the recourse of Lender against General Partner shall be limited to judicial foreclosure of Mortgaged Premises or the exercise of other remedies set forth herein and in other Loan Papers including Other Security.
- C. Except as herein and in other Loan Papers provided, including Other Security, no deficiency judgment for indebtedness (following the application of Mortgaged Premises, Other Security and the proceeds thereof) shall be instituted, sought, taken or obtained against General Partner, PROVIDED THAT nothing contained herein shall be deemed to prejudice the rights of Lender to recover from General Partner:
- 1) all actual losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Lender as a result of fraud, material misrepresentation made by General Partner or a breach of any warranty and representation contained in any document delivered to Lender by or at the request of General Partner or as a result of the intentional or negligent waste of Mortgaged Premises;
 - 2) all rents, revenues, issues and profits from Mortgaged Premises received during the period of any Monetary Default or Non-Monetary Default or after acceleration of Indebtedness and not applied to the payment of Indebtedness or the normal operating expenses of Mortgaged Premises;

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- 3) all rents from Mortgaged Premises collected more than one (1) month in advance which are not earned at the time of the occurrence of any Monetary Default or Non-Monetary Default and which are not applied to payment of Indebtedness or the normal operating expenses of Mortgaged Premises; and
- 4) all "Proceeds" and "Awards" (as defined in Mortgage) which are not applied in accordance with the provisions of Loan Papers.

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, Borrow, Guarantors and Lender have executed or caused this Loan Agreement to be executed by them or their respective duly authorized officers and partners as of the day and year first above written.

BORROWER:

314 WEST SUPERIOR LIMITED PARTNERSHIP,
an Illinois limited partnership

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

By: Howard R. Conant, Jr.
Title: President

GUARANTORS:

URBAN INNOVATIONS, LTD., an Illinois
corporation

By: Howard R. Conant, Jr.
Name: Howard R. Conant, Jr.
Title: President

Howard R. Conant, Jr.
HOWARD CONANT, JR., individually

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LENDER:

AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO, a national banking
association

By:

Carrie A. Buehler
Title: COMMERCIAL BANKING
OFFICER

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
)
COUNTY OF C O O K) SS.

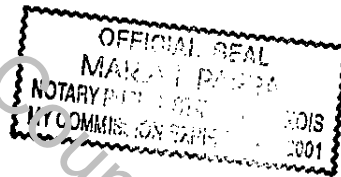
The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Carrie A. Reckert, Officer of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("Lender"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Officer, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Lender, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 22nd day of July, 1999.

Maria S. Pava
Notary Public

My Commission Expires:

4-10-2001



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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

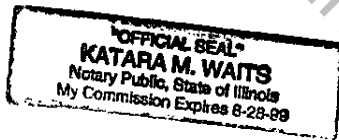
The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Howard Conarty, Jr., President of URBAN INNOVATIONS, LTD., an Illinois corporation ("General Partner"), general partner of 314 WEST SUPERIOR LIMITED PARTNERSHIP ("Partnership") who is personally known to me to be the same person whose name is subscribed to the foregoing instrument in the foregoing capacity appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said General Partner and Partnership for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of July, 1999.

Katara M. Waits
Notary Public

My Commission Expires:

8/28/99



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STATE OF ILLINOIS)
)
) SS.
COUNTY OF)

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Howard Conant, Jr., President, of URBAN INNOVATIONS, LTD., an Illinois corporation ("Guarantor") who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____ 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 Guarantor for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of July, 1999.

Katara M. Waits

Notary Public

My Commission Expires:

8/28/99



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STATE OF ILLINOIS)
) SS.
COUNTY OF)

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that HOWARD CONANT, JR. ("Guarantor"), who is 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 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 Guarantor for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of July, 1999.

Katara M. Waits
Notary Public

My Commission Expires:

8/20/99



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EXHIBIT "A"

LEGAL DESCRIPTION

LOTS 18, 19, 20 AND THE WEST 6 1/8 INCHES OF LOT 21 AND THE EAST 1/2 OF THE TRACT OF LAND KNOWN AND DESCRIBED AS LOTS 14 TO 17, BOTH INCLUSIVE, IN BLOCK 17 IN BUTLER, WRIGHT AND WEBSTER'S ADDITION TO CHICAGO, A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Tax I.D. No.: 17-09-201-009

Commonly Known Address: 314 West Superior, Chicago, Illinois

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