

# UNOFFICIAL COPY

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1999-10-06 14:38:57  
Cook County Recorder 35.00



## SECOND LOAN MODIFICATION AGREEMENT

This SECOND LOAN MODIFICATION AGREEMENT ("Agreement") is made as of September 3, 1999 by and between CITY CENTER LOFTS L.L.C., an Illinois limited liability company ("Mortgagor"), CALVIN D. BOENDER, ROBERT FINNIGAN, and LASALLE BANK FSB, a federal savings bank, having an office located at 8303 W. Higgins Road, Chicago, IL 60631 (hereinafter referred to as the "Bank").

### RECITALS

WHEREAS, Mortgagor is indebted to the Bank in the principal amount not to exceed THIRTY SIX MILLION FOUR HUNDRED FOURTEEN THOUSAND DOLLARS (\$36,414,000.00) together with interest thereon as provided in that certain Substituted Construction Mortgage Note dated November 23, 1998 in the principal amount of THIRTY SIX MILLION FOUR HUNDRED FOURTEEN THOUSAND DOLLARS (\$36,414,000.00) executed and delivered by Mortgagor to the Bank (the "Substituted Note"); and

WHEREAS, the Substituted Note has been issued pursuant to that certain Amended and Restated Construction Loan Agreement dated November 23, 1998 by and between the Mortgagor and the Bank (the "Loan Agreement") and the loan indebtedness evidenced by the Substituted Note is evidenced or secured by the following documents (which together with any other documents or instruments evidencing or securing the loan now evidenced by the Substituted Note, all as modified by that certain Loan Modification Agreement dated November 23, 1998 by and between the parties hereto and recorded with the Cook County Recorder of Deeds on January 7, 1999 as Document No. 99013638 (the "Loan Modification Agreement"), are sometimes hereinafter collectively referred to as the "Loan Documents"):

1. Mortgage and Security Agreement dated April 1, 1998 made by Mortgagor to the Bank and recorded with the Cook County Recorder of Deeds on April 14, 1998 as Document No. 98291110 (the "Mortgage") encumbering and relating to the real property legally described on Exhibit "1" attached hereto and made a part hereof (the "Mortgaged Premises");

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2. Assignment of Purchase Agreements, Leases and Rents dated April 1, 1998 made by Mortgagor to the Bank and recorded with the Cook County Recorder of Deeds on April 14, 1998 as Document No. 98291111 (the "Assignment of Purchase Agreements, Leases and Rents") encumbering and relating to the Mortgaged Premises.

WHEREAS, CALVIN D. BOENDER and ROBERT FINNIGAN (who are sometimes hereinafter collectively referred to as the "Guarantors") have unconditionally guaranteed the repayment of the loan indebtedness evidenced by the Substituted Note and the performance and observance of all of the terms, covenants, and conditions of the Loan Documents pursuant to that certain Guaranty dated April 1, 1998 executed and delivered by Guarantors to the Bank, as modified by the Loan Modification Agreement (the "Guaranty"); and

WHEREAS, Mortgagor desires to modify the terms and conditions of the loan evidenced by the Substituted Note so that Mortgagor may borrow under and pursuant to the Substituted Note the principal amount of Five Million Dollars (\$5,000,000.00) to enable Mortgagor to repay in part the indebtedness of Mortgagor evidenced by those certain Subordinated Secured Promissory Notes in the aggregate principal amount of \$22,000,000.00 payable to Independent Trust Corporation, as Trustee under a certain Trust Indenture dated as of September 19, 1997 (the "Subordinated Notes"), pursuant to the terms, covenants and conditions set forth herein; and

WHEREAS, to induce the Bank to modify the terms of loan evidenced by the Substituted Note and the terms of the Loan Agreement, Mortgage and other Loan Documents, Mortgagor and Guarantors have offered to enter into this Agreement. The Bank has accepted such offer.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all parties hereto, Mortgagor and Guarantor hereby agree with the Bank as follows:

1. The foregoing recitals are hereby incorporated herein by reference as if fully set forth in this Paragraph 1 of the Agreement.
2. Mortgagor hereby promises to pay to the Bank upon the execution and delivery of this Agreement a loan modification fee in the amount of \$50,000.00.
3. The Substituted Note is hereby modified such that Mortgagor promises to pay to the Bank the principal amount of the Substituted Note in an amount not to exceed THIRTY FOUR MILLION FIVE HUNDRED SIXTY TWO THOUSAND THREE HUNDRED TWENTY EIGHT DOLLARS (\$34,562,328.00) with interest thereon at the Interest Rate and at the times and in the manner as follows:

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Interest on the outstanding principal balance of the Substituted Note shall be calculated on the basis of a year consisting of 360 days and paid for the actual number of days elapsed at the Interest Rate of the "Prime Rate" of LaSalle Bank National Association, a national banking association ("LBNA"), as announced by LBNA from time to time in effect. The Interest Rate shall change if and when said "Prime Rate", and any such change in the Interest Rate shall be effective as of the date of the respective change in said "Prime Rate". The term "Prime Rate" as used herein shall mean at any time such rate as LBNA announces from time to time to be its reference rate for interest rate determinations. It is expressly agreed that the use of the term "Prime Rate" is not intended to mean, nor does it imply, that said rate of interest is the lowest interest rate charged by LBNA or the Bank, a preferred prime commercial rate of interest or one which is offered by LBNA or the Bank to its most credit worthy customers.

On October 1, 1999 and continuing on the first (1st) day of each month thereafter Mortgagor shall pay to the Bank interest at applicable Interest Rate as aforesaid on the outstanding principal balance of the Substituted Note, provided that the final payment of the entire outstanding principal balance of the Substituted Note and accrued interest thereon shall be paid by Mortgagor to the Bank on October 1, 2000.

4. The Loan Agreement is hereby modified to provide that:

(a) Section 3.5 of the Loan Agreement is hereby deleted and the following Section 3.5 is hereby inserted in lieu thereof:

"3.5: USE OF LOAN PROCEEDS. Borrower will utilize the proceeds of the Loan described herein as follows:

<u>USE</u>	<u>AMOUNT NOT TO EXCEED</u>
(a) Principal Loan balance as of August 17, 1999	\$24,396,286.00
(b) Funding for any draw upon stand-by Letter of Credit issued by Bank for benefit of City of Chicago to assure completion of certain public improvements	25,000.00
(c) Towards repayment in full of Subordinated Notes in the aggregate principal amount of \$11,000,000.00 and loan modification fee and other costs	4,800,000.00
(d) Contingent interest reserve in account pledged to Bank	200,000.00
(e) Interest Reserve	714,324.00
(f) Balance of the Loan as a construction loan for construction of the improvements.	4,426,718.00
Total Loan amount not to exceed	<u>\$34,562,328.00</u>

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5. Each of the Loan Documents is hereby modified such that each of said Loan Documents shall continue in full force and effect to secure the full and prompt payment of the

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loan indebtedness evidenced by the Substituted Note, as modified herein, and to secure the full and prompt payment, performance and observances of all of the terms, covenants and conditions of the Substituted Note, the Loan Agreement, this Agreement or any document evidencing or securing the indebtedness evidenced by the Substituted Note, all as modified herein.

6. Each of Guarantors hereby acknowledges and agrees that the Guaranty shall include, without limitation, an unconditional, irrevocable and absolute guaranty, as principal obligor and not as surety, of the full and prompt payment when due, whether by acceleration or otherwise, and at all times thereafter, of all obligations of Mortgagor under the Substituted Note as modified herein and the full and prompt performance and observance of all of the warranties, covenants and agreements provided by each of the Loan Agreement and the Loan Documents, as modified herein (as such documents are or may be modified) evidencing or securing any indebtedness evidenced by said Substituted Note to be performed and observed by the parties who executed said documents. Guarantors reaffirm their respective obligations stated in the Guaranty, consent to the matters affected by this Agreement and agree that their respective liabilities as guarantors shall not be diminished by this Agreement.

7. In all respects, other than those expressly amended, modified or supplemented hereby, Mortgagor and Guarantors do hereby ratify and confirm the provisions, terms and conditions of the Substituted Note, the Loan Agreement, each of the Loan Documents and Guaranty.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed the day and year above written.

CITY CENTER LOFTS L.L.C., an Illinois limited liability company,

By:   
Calvin D. Boender, Manager

By:   
Robert Finnigan, Manager

  
CALVIN D. BOENDER

  
ROBERT FINNIGAN

LASALLE BANK FSB, a federal savings bank

By:   
Title: \_\_\_\_\_

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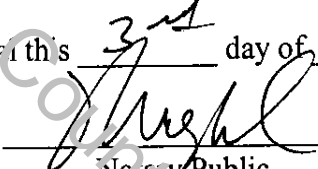
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This document prepared by:  
Timothy S. Breems  
222 N. LaSalle - Suite 1525  
Chicago, IL 60601

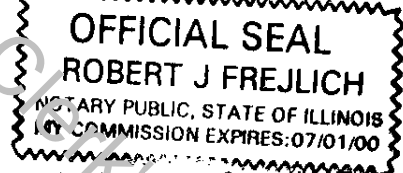
STATE OF ILLINOIS        )  
  )SS  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for said county, in the State aforesaid, DO HEREBY CERTIFY that Calvin D. Boender, Manager, and Robert Finnigan, Manager of CITY CENTER LOFTS L.L.C., an Illinois limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Managers of CITY CENTER LOFTS L.L.C., an Illinois limited liability company, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said CITY CENTER LOFTS L.L.C., an Illinois limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3<sup>rd</sup> day of September, 1999.

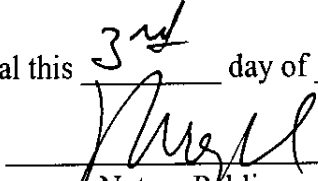
  
\_\_\_\_\_  
Notary Public

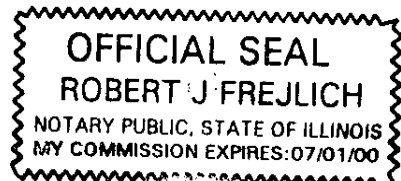
STATE OF ILLINOIS        )  
  )SS  
COUNTY OF COOK        )



I, the undersigned, a Notary Public in and for said county, in the State aforesaid, DO HEREBY CERTIFY that CALVIN D. BOENDER, 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 signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3<sup>rd</sup> day of September, 1999.

  
\_\_\_\_\_  
Notary Public        **99946686**



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STATE OF ILLINOIS        )  
  )SS  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for said county, in the State aforesaid, DO HEREBY CERTIFY that ROBERT FINNIGAN, 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 signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of September, 1999.

[Signature]  
Notary Public

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK )

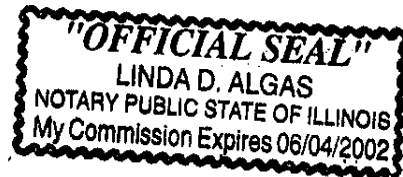


I, the undersigned, a Notary Public in and for said county, in the State aforesaid, DO HEREBY CERTIFY that JAMES PAPE, of LASALLE BANK FSB, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such VICE PRESIDENT, appeared before me this day in person and 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 LASALLE BANK FSB, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 7th day of SEPTEMBER, 1999.

[Signature]  
Notary Public

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## EXHIBIT "A"

### PARCEL 1:

SUB LOTS 1 TO 8 IN THE CANAL TRUSTEES' SUBDIVISION OF LOT 5 IN BLOCK 41 IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 1A:

THE VACATED 10 FOOT ALLEY LYING SOUTH OF AND ADJOINING LOT 4, AFORESAID AND LYING NORTH OF AND ADJOINING LOTS 5 TO 8 IN THE CANAL TRUSTEES' SUBDIVISION OF LOT 5, AFORESAID, VACATED BY ORDINANCE RECORDED JULY 10, 1907 AS DOCUMENT NUMBER 4064413, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

LOT 6 IN BLOCK 41 IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 3:

SUB-LOTS 1 AND 2 IN CANAL TRUSTEES' SUBDIVISION OF LOT 7 IN BLOCK 41 IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 4:

SUB-LOT 3 IN CANAL TRUSTEES SUBDIVISION OF LOT 7 IN BLOCK 41 IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### DESCRIBED AS FOLLOWS:

THAT PROPERTY AND SPACE WHICH IS CONTAINED WITHIN AND BETWEEN THAT CERTAIN HORIZONTAL PLANE LOCATED 173.10 FEET ABOVE CHICAGO CITY DATUM, AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 294.19 FEET ABOVE CHICAGO CITY DATUM AND WHICH LIES WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THE FOLLOWING DESCRIBED PART OF SAID TRACT; BEGINNING AT A POINT ON THE SOUTH LINE OF SAID TRACT, 79.14 FEET EAST OF THE SOUTHWEST CORNER; THENCE NORTH 62.52 FEET; THENCE EAST 83.36 FEET; THENCE NORTH 118.31 FEET TO THE NORTH LINE OF SAID TRACT; THENCE EAST ALONG SAID NORTH LINE 59.60 FEET TO THE NORTHEAST CORNER OF TRACT; THENCE SOUTH ALONG EAST LINE OF TRACT, 180.83 FEET TO THE SOUTHEAST CORNER OF TRACT; THENCE WEST ALONG SOUTH LINE OF TRACT 142.96 FEET TO THE POINT OF BEGINNING.

### PARCEL B:

NON-EXCLUSIVE EASEMENT FOR ACCESS, INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL A CREATED BY DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS MADE BY CITY CENTER LOFTS L.L.C. AND LASALLE NATIONAL BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 1, 1998 AND KNOWN AS TRUST NUMBER 121802 RECORDED AS DOCUMENT 99530391.

ADDRESS: 212 WEST WASHINGTON STREET, CHICAGO, ILLINOIS 60606

P. I. N. 17-09-444-007, 17-09-444-008, 17-09-444-009

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THE FOLLOWING PARCEL OF LAND, PROPERTY AND SPACE CONTAINED WITHIN, ABOVE AND BELOW A TRACT OF LAND DESCRIBED AS FOLLOWS::

PARCEL 1:

SUBLOTS 1 TO 8 IN THE CANAL TRUSTEES SUBDIVISION OF LOT 5 IN BLOCK 41 IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 1A:

THE VACATED 10 FOOT ALLEY LYING SOUTH OF AND ADJOINING LOT 4 AFORESAID AND LYING NORTH OF AND ADJOINING LOTS 5 TO 8 IN THE SUBDIVISION OF LOT 5 AFORESAID, VACATED BY ORDINANCE RECORDED JULY 10, 1907 AS DOCUMENT NUMBER 4064415

PARCEL 2:

LOT 6 IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

SUBLOTS 1 AND 2 IN CANAL TRUSTEES SUBDIVISION OF LOT 7 IN BLOCK 41 IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

SUBLOT 3 IN CANAL TRUSTEES SUBDIVISION OF LOT 7 IN BLOCK 41 IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, TAKEN AS A TRACT SAID PART BEING DESCRIBED AS FOLLOWS::

PARCEL A (GARAGE SITE):

BEGINNING AT SOUTHWEST CORNER OF SAID TRACT; THENCE NORTH ALONG WEST LINE OF TRACT 180.82 FEET TO THE NORTHWEST CORNER OF TRACT; THENCE EAST ALONG NORTH LINE OF TRACT 163.31 FEET; THENCE SOUTH 118.66 FEET; THENCE WEST 84.18 FEET; THENCE SOUTH 61.12 FEET; THENCE WEST 79.14 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING.

PARCEL B (LOBBY-1ST LEVEL):

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN THAT CERTAIN HORIZONTAL PLANE LOCATED 14.60 FEET ABOVE CHICAGO DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 28.98 ABOVE CHICAGO CITY DATUM AND WHICH LIES WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THE FOLLOWING DESCRIBED PART OF SAID TRACT; BEGINNING AT A POINT ON THE SOUTH LINE OF SAID TRACT 79.14 FEET EAST OF THE SOUTHWEST CORNER; THENCE NORTH 61.12 FEET; THENCE EAST 22.83 FEET; THENCE SOUTH 61.12 FEET TO THE SOUTH LINE OF SAID TRACT; THENCE WEST 22.83 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING.

ADDRESS: 230 W. WASHINGTON STREET, CHICAGO, IL 60606  
P. I. N. 17-09-444-001, 002, 004, 005, 006, 007, 011

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SUBJECT, however, to all valid existing interests of third parties in the Premises, including but not limited to, reservations, rights of way and other encumbrances of record, or otherwise.

TOGETHER with all tenements, hereditaments and appurtenances, if any, on the Premises or related thereto, and any reversions, remainders, rents, issues or profits on the Premises. Grantee acknowledges that by this Deed Grantor warrants only claims made by, through or under Grantor, and that there may be limitations or restrictions on the ownership rights of Grantor in the Premises where Grantor acquired its ownership with such limitations or restrictions, or as a result of applicable law, and Grantee accepts delivery of this deed with understanding and on this condition.

WITNESSETH, that Grantor, for and in consideration of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, in hand paid by the Grantee, the receipt whereof is hereby acknowledged, and pursuant to authority of the Board of Directors for said corporation, by these presents does REMISE, RELEASE, ALIEN and CONVEY unto the Grantee, and to Grantee's successors and assigns, FOREVER, all of Grantor's right, title and interest in the real property and improvements owned by Grantor and located in the County of Cook, State of Illinois, as such real property ("Premises") is more particularly described in Exhibit "A", consisting of one (1) page, attached hereto and made a part hereof.

THIS AGREEMENT, made between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, (formerly Burlington Northern Railroad Company), of 2650 Lou Menck Drive, Fort Worth, Texas 76131-2830, ("Grantor"), and ANT, LLC, a Delaware limited liability company, and its successors and assignees, whose address is 201 Mission Street, Pacific Gateway Building, San Francisco, California 94105, ("Grantee").

SPECIAL WARRANTY DEED

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WHEN RECORDED MAIL TO:  
ANT, LLC  
4545 Fuller Drive, Suite 100  
Irving, Texas 75038  
Attention: Title & Escrow Department  
NAME AND ADDRESS OF TAXPAYER:  
ANT, LLC  
4545 Fuller Drive, Suite 100  
Irving, Texas 75038

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Property of Cook County Clerk's Office

143571  
REVENUE DEPT. OF REVENUE  
STAMP OCT-5-99  
Cook County  
REAL ESTATE TRANSACTION TAX  
= 30.75

COOK  
CO. NO. 018  
296216  
STATE OF ILLINOIS  
REAL ESTATE TRANSFER TAX  
DEPT. OF REVENUE  
OCT-5-99  
= 61.50  
RB.10686