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Cook County Recorder 51.50



SECOND MODIFICATION  
OF MORTGAGE NOTE,  
MORTGAGE, SECURITY  
AGREEMENT AND  
ASSIGNMENT OF  
RENTS, AND RELATED  
SECURITY DOCUMENTS

#0456812-9003

Space Above This Line For Recording Data

This Second Modification of Mortgage Note, Mortgage, Security Agreement and Assignment of Rents, and Related Security Documents (hereinafter referred to as this "Agreement") is made as of September 30, 1999 among Autumn West Partnership, an Illinois general partnership with a mailing address at 118 N. Clinton, 2nd Floor, Chicago, Illinois 60606 (hereinafter referred to as "Borrower"), Victor Chigas, Richard Konst and Mark Schwarz (the three of whom are collectively hereinafter referred to as the "Guarantors") with a collective mailing address at 118 N. Clinton, 2nd Floor, Chicago, Illinois 60606 and Banco Popular North America f/k/a Banco Popular, Illinois f/k/a Capital Bank & Trust ("Lender") with a mailing address at 4801 West Fullerton Avenue, Chicago, Illinois 60639.

WHEREAS, Borrower has executed and delivered to Lender a Mortgage Note dated as of February 22, 1994 wherein Borrower promises to pay to the order of Lender the principal sum of One Million Five Hundred Seventy Five Thousand and No/100 Dollars (\$1,575,000.00) in repayment of a loan (the "Loan") from Lender to Borrower in like amount or so much thereof as may have been disbursed by Lender under the Note, together with interest thereon, in installments as set forth therein (hereinafter referred to as the "Existing Note").

WHEREAS, the Existing Note is secured by a Mortgage, Security Agreement, and Assignment of Rents of even date with the Existing Note made by Borrower, as mortgagor, to Lender, as mortgagee, recorded in the office of the Recorder of Deeds for Cook County, Illinois (the "Recorder's Office") on February 22, 1994 (the "Recording Date") as Document No. 94176060 (the "Mortgage") which relates to the property (the "Mortgaged Property") legally described on Exhibit A, which is

attached hereto and made a part hereof.

WHEREAS, the Note is additionally secured by (a) a Guaranty of Payment and Performance of even date with the Existing Note made by Victor Chigas to Lender; (b) a Guaranty of Payment and Performance of even date with the Existing Note made by Richard Konst to Lender; and (c) a Guaranty of Payment and Performance of even date with the Existing Note made by Mark Schwartz to Lender (hereinafter collectively referred to as the "Guaranties") (The Mortgage and the Guaranties and any and all other documents that may have been executed as additional security for the repayment of the Loan are hereinafter collectively referred to as the "Security Documents". The Existing Note and the Security Documents are hereinafter collectively referred to as the "Loan Documents") -

WHEREAS, the parties hereto previously amended the Loan Documents to, among other things, (1) increase the principal amount of the Existing Note to One Million Eight Hundred Thousand and No/100 Dollars (\$1,800,000.00); (2) modify the interest rate under the Existing Note and the payments corresponding thereto; (3) modify various terms and conditions of the Loan; and (4) to reflect the change of the name of Lender from Capital Bank and Trust to Banco Popular, Illinois; pursuant to and in accordance with the terms of that certain Modification of Mortgage Note, Mortgage, Security Agreement and Assignment of Rents, and Related Security Documents dated June 30, 1998; and

WHEREAS, the parties hereto desire to amend the Loan Documents to, among other things, (1) increase the principal amount of the Existing Note by the sum of \$350,000.00 from the present balance of \$1,752,406.92 to a new principal balance of Two Million Ninety Nine Thousand Forty Nine and 15/100 Dollars (\$2,099,049.15); (2) modify the interest rate under the Existing Note and the payments corresponding thereto; (3) modify various terms and conditions of the Loan; and (4) to reflect the change of the name of Lender from Banco Popular, Illinois to Banco Popular North America;

NOW, THEREFORE, for and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower, Guarantors and Lender do hereby agree as follows:

1. **AFFIRMATION OF RECITALS.** The recitals set forth above are true and correct and are

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incorporated herein by this reference.

2. **DEFINITION OF TERMS.** Unless otherwise defined herein to the contrary, all defined terms in this Agreement shall have the respective meanings ascribed to them in the Loan Documents.

3. **AMENDMENT OF EXISTING NOTE.** The Existing Note is hereby amended as follows:

3.1 All references in the existing Note to the sum of \$1,800,000.00, whether in words or in Arabic Script, are hereby deleted and substituted in lieu thereof are corresponding references to the sum of \$2,099,049.15.

3.2. Section 2 (A) of the Existing Note is hereby amended by deleting same in its entirety and inserting in lieu thereof the following:

A. **Interest Rate.** Interest shall accrue on the outstanding principal balance from September 30, 1999, at an annual interest rate of seven and 44/100 percent (7.44%).

3.3. Section 2 (B) of the Existing Note is hereby amended by deleting same in its entirety and inserting in lieu thereof the following:

B. **Monthly Payments of Principal and Interest.** On October 30, 1999, and on the first day of each month thereafter until the Maturity Date (as defined below), Maker shall pay to Lender principal and interest payments of Sixteen Thousand Nine Hundred Seventy and 00/100 (\$16,970.00).

3.4 Section 2(C) of the Existing Note is hereby amended by deleting same in its entirety and inserting in lieu thereof the following:

C. **Maturity Date.** All unpaid principal and accrued interest thereon, if not sooner due or paid, shall be due and payable on September 30, 2004 (the "Maturity Date").

3.5 All references in said Note to a maturity date, termination date, due date, the date upon which all sums are due and owing, or the date that the final payment of principal and interest, if not sooner paid, shall be due, are amended to change such due date, maturity date, termination date, date upon which all sums are due and owing, or date that the final payment of principal and interest shall be due, to September 30, 2004.

3.6 Section 2(C) of the Existing Note is hereby amended by deleting same in its entirety and inserting in lieu thereof the following:

G. Prepayment Penalty. Maker reserves the right to prepay the unpaid principal of this Note, in whole or in part, together with accrued interest thereon to the date of such prepayment, and that Maker gives Lender not less than thirty (30) days' prior written notice of its intention to do so, and on the further condition that Maker shall also pay at the time of such prepayment and in addition thereto, a premium equal to five percent (5%) of the amount of principal so prepaid during the first (1st) "Loan Year" (as that term is hereinafter defined), declining by one percent (1%) for each Loan Year thereafter; provided further, however, that if prior to the Maturity Date a Default occurs and Lender elects to declare all principal and interest hereunder immediately due and payable, a prepayment premium calculated as aforesaid shall be included in the indebtedness then due and payable hereunder, and any tender of payment shall include such premium. The term "Loan Year", as used herein, means a twelve (12) calendar month period commencing on September 30, 1999, and each subsequent Loan Year commencing on each anniversary thereof. Notwithstanding the foregoing, no prepayment penalty or premium shall arise or be due in payable if the prepayment arises pursuant to or as a result of the following: (a) the prepayment shall occur during the 90 day period immediately prior to the Maturity Date; (b) the prepayment shall arise or occur as a result of or pursuant to the sale of the entire property securing this Note to a third party not related to the Maker; (c) the prepayment shall arise or occur as a result of or pursuant to the refinance by Lender of the Loan or the property securing this Note; (d) Prepayments made by Maker at Maker's discretion from excess cash flow of Maker and/or contributions from any Guarantors of the Loan; and (e) the prepayment shall arise or occur or be made, in full or in part, with the proceeds of any casualty or damage insurance claim. No partial prepayment shall extend or postpone the due date of any subsequent monthly installment of principal and/or interest arising hereunder.

3.7 All references in the Existing Note to the Disbursement Date and calculations based thereon shall be amended to refer to the date of this Modification.

3.8 All references in the Existing Note to Banco Popular, Illinois are hereby deleted and substituted in lieu thereof are corresponding references to Banco Popular North America.

3.9 Except as specifically set forth to the contrary hereinabove, the Existing Note remains unmodified and in full force and effect.

4. **AMENDMENT OF MORTGAGE.** The Mortgage is hereby amended as follows:

4.1 All references in the Mortgage to the Note shall be deemed to be references collectively to the Existing Note as modified hereby.

4.2 All references in the Mortgage to the sum of \$1,800,000.00, whether in words or in Arabic Script, are hereby deleted and substituted in lieu thereof are corresponding references to the sum of \$2,099,049.15.

4.3 All references in the Mortgage to Banco Popular, Illinois are hereby deleted and substituted in lieu thereof are corresponding references to Banco Popular North America.

4.3 Except as specifically set forth to the contrary hereinabove, the Mortgage remains unmodified and in full force and effect.

5. **AMENDMENT OF GUARANTY AND ADDITIONAL LOAN DOCUMENTS.** The Guaranties and all remaining loan documents not specifically set forth above are hereby amended as follows:

5.1 All references therein to the Existing Note and Mortgage shall be deemed to be references to the Existing Note and Mortgage as modified and described herein.

5.2 All references therein to the Loan Documents shall be deemed to be references to such Loan Documents as respectively modified hereby.

5.3 All references in the Guaranties and Loan Documents to Banco Popular, Illinois are hereby deleted and substituted in lieu thereof are corresponding references to Banco Popular North America.

5.4 The Guaranties shall be amended and modified in accordance with the terms of the respective Ratification and Modification of Guaranty for each Guarantor, copies of which are attached hereto and made a part hereof as Exhibit B.

5.5 Except as specifically set forth to the contrary hereinabove, the Guaranties and all remaining Loan Documents remain unmodified and in full force and effect.

6. **PRINCIPAL BALANCE EXISTING NOTE.** The parties hereto acknowledge that the outstanding principal balance of the Note, as of the date hereof, after payment of the installment of principal and interest due on September 30, 1999 is \$1,749,049.15 and that concurrently with the execution hereof Lender shall advance to Borrower the sum of \$350,000.00 for a total principal indebtedness of \$2,099,049.15.

7. **REPRESENTATIONS AND WARRANTIES.** Borrower and Guarantors hereby confirm and remake all representations and warranties set forth in the Loan Documents.

8. **ADDITIONAL PROVISIONS.** This Agreement shall be effective only upon:

(a) Delivery by Borrower to Lender of satisfactory evidence insuring the continued validity and priority of the Loan Documents, as herein amended, and the continued validity and priority of the Security Interests created thereby including, but not limited to delivery by Borrower to Lender of a satisfactory Date Down Endorsement to the existing Mortgagee's title insurance policy issued by Chicago Title Insurance Company with respect to the Mortgage, insuring the continued validity and priority of the Loan Documents, as herein amended, following the recording of this Agreement (subject only to the matters set forth on Schedule B of said policies and such matters as are approved by Lender), confirming all previous endorsements thereto, if any, and extending the effective date of the policies through the date of recording of this Agreement.

(b) Execution by Borrower and Guarantor of any and all Certificates, Financing Statements, Instruments, Assignments, Notices and Documents as may be required or as may be deemed and determined by the Lender, in its sole discretion, to be necessary in order to perfect and complete Lender's Security interest in accordance with the Loan Documents as amended hereby.

(c) Payment by Borrower and/or Guarantor to Lender, immediately upon the submission of bills and invoices therefor, of all amounts incurred by or on behalf of Lender for attorneys' fees, recording expenses, filing fees, title expenses, title insurance fees, title insurance endorsement fees, and all other reasonable costs incurred or to be incurred by or on behalf of 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, including, without limitation, all costs and expenses with respect to compliance by Borrower and Guarantor with the terms and conditions hereof and Lender's enforcement thereof. The rights and remedies of Lender contained in this Paragraph 8 shall be in addition to, and not in lieu of, the rights and remedies contained in the Loan Documents, as herein amended, and as otherwise provided by law.

9. **REMAINING PROVISIONS IN EFFECT.** Except as amended by this Agreement, the terms and conditions of the Loan documents remain in full force and effect.

10. **EFFECTIVENESS.** This Agreement shall be effective as of the execution hereof subject to the provisions of Paragraph 8 hereof.

11. **GOVERNING LAW.** This Agreement shall be construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles.

12. **CONSTRUCTION.** This Agreement shall not be construed more strictly against Lender merely by virtue of the fact that the same has been prepared by Lender or its counsel, it being recognized that Borrower, Guarantors, and Lender have contributed substantially and materially to the preparation of this Agreement.

13. **GENDER.** All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders and any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

14. **ENTIRE AGREEMENT.** Borrower, Guarantors and Lender acknowledge that there are no other agreements or representations, either oral or written, express or implied, that are not embodied in this Agreement and the Loan Documents. This Agreement and the Loan Documents together represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantors and Lender.

15. **BENEFIT.** This Agreement shall be binding upon and shall inure to the benefit of Borrower, Guarantors and Lender, and their respective successors, assigns, grantees, heirs, executors, personal representatives and administrators.

16. **RATIFICATION; AUTHORITY.** Except as herein amended, the Loan Documents shall remain in full force and effect, and all of the terms and provisions of the Loan Documents, as herein amended, are hereby ratified and reaffirmed. Borrower and Guarantors represent to Lender that there is no other ownership interest, lien, or other interest, now outstanding against the Mortgaged Property

other than the lien of the Loan Documents; and that the lien of Lender on the Mortgaged Property is previously subsisting and, as herein amended, has been, is and shall remain a valid first, prior and paramount lien on said Mortgaged Property, enjoying the same or superior priority with respect to other claims upon said Mortgaged Property as prevailed prior to the execution of this Agreement. Borrower and Guarantors have duly authorized, executed and delivered this Agreement, and acknowledge that the Loan Documents are valid and enforceable in accordance with their terms against them.

17. **DEFAULTS.** The occurrence of any one or more of the following shall constitute a Default under this Agreement.

(a) the untruthfulness of any representation or warranty contained in this Agreement, or the existence of any misrepresentation of fact or fraud contained in any document or information heretofore or hereafter submitted or communicated to Lender in support of this Agreement;

(b) the breach or violation of any term, covenant, or condition contained in this Agreement; or

18. **TERMINATION.** Immediately following the occurrence of any Default under this Agreement, Lender may, at its option (a) exercise any or all of its rights and remedies under the Loan Documents and/or (b) pursue any other remedies available to it.

19. **CONSENT TO AMENDMENT.** Borrower acknowledges that it has thoroughly read and reviewed the terms and provisions of this Agreement and is familiar with same, that the terms and provisions contained herein are clearly understood by it and have been fully and unconditionally consented to by it and that it has had full benefit and advice of counsel of its own selection in regard to understanding the terms, meaning and effect of this Agreement, and that this Agreement has been entered into by it, freely, voluntarily, with full knowledge, and without duress, and that in executing this Agreement, it is relying on no other representations, either written or oral, or express or implied, made to it.

20. **RATIFICATION OF GUARANTORS' OBLIGATIONS.** Guarantors acknowledge (1) that they



have thoroughly read and reviewed the provisions of this Agreement and that they are familiar with same; (2) that the terms and provisions contained herein are clearly understood by them and have been fully and unconditionally consented to by them including, without limitation, their obligations under each of their respective Ratification and Modification of Guaranty to be executed in connection herewith. Guarantors further acknowledge that they have had the full benefit and advise of Counsel of their own selection in regard to understanding the terms, meaning and effect of this Agreement, their Guaranties, and the individual Ratification and Modification of Guaranty, and that their Guaranties, the Ratification and Modification of Guaranty, and this Agreement have been entered into by them freely, voluntarily, with full knowledge, and without duress, and that in executing this Agreement and the Ratification and Modification of Guaranty, they are relying on no other representations, either written or oral, expressed or implied, made to them.

21. **COUNTERPARTS.** It is understood and agreed that this Agreement may be executed in several counterparts, each of which shall, for all purposes, be deemed an original and all of such counterparts taken together, shall constitute one and the same Agreement, even though all of the parties hereto may not have executed the same counterpart of this Agreement.

22. **DEFINITION OF TERMS.** All initial-capitalized terms not expressly defined in this Agreement shall bear the same respective definitions herein as they bear in the Loan Documents, as herein amended.

[Remainder of Page Intentionally Left Blank: Signatures on Following Page]

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IN WITNESS WHEREOF, this instrument has been executed by the parties hereto in manner and form sufficient to bind them, as of the day and year first above written.

Atrium West Partnership

By: JMM HOLDING, INC., an Illinois Corporation

By: *Mark Helwan*  
Its: President

By: RSLM CORP., an Illinois Corporation

By: *Paul K...A*  
Its: President

By: THREE SEAS HOLDING, INC. an Illinois Corporation

By: *John Cheng*  
Its: President

BANCO POPULAR NORTH AMERICA f/k/a  
BANCO POPULAR, ILLINOIS f/k/a CAPITAL  
BANK AND TRUST

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

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

Property of Cook County Clerk's Office



ACKNOWLEDGEMENT

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Barbara Martin, a Notary Public in and for said county, in the state aforesaid, DO HEREBY CERTIFY THAT Mark Schwartz, acknowledged to me to be the president of JMM Holding, Inc., an Illinois Corporation, is 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 said instrument as his own free and voluntary act and as the free and voluntary act of said corporation.

GIVEN under my hand and Notarial Seal this 6<sup>th</sup> day of 10, 1999.

Barbara A. Martin  
NOTARY PUBLIC

My Commission Expires:

05/12/02



ACKNOWLEDGEMENT

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

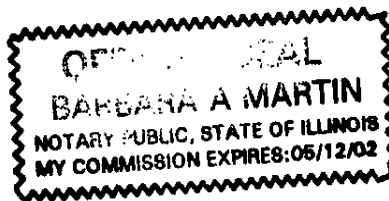
I, Barbara A. Martin a Notary Public in and for said county, in the state aforesaid, DO HEREBY CERTIFY THAT Richard Konst, acknowledged to me to be the president of RSLM Corporation, an Illinois Corporation, is the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation.

GIVEN under my hand and Notarial Seal this 6<sup>th</sup> day of October 1999.

Barbara A. Martin  
NOTARY PUBLIC

My Commission Expires:

05/12/02



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STATE OF ILLINOIS  
CLERK OF THE COURT  
JANUARY 1, 2011  
JANUARY 1, 2011

Property of Cook County Clerk's Office

STATE OF ILLINOIS  
CLERK OF THE COURT  
JANUARY 1, 2011  
JANUARY 1, 2011

**ACKNOWLEDGEMENT**

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Barbara Martin, a Notary Public in and for said county, in the state aforesaid, DO HEREBY CERTIFY THAT Victor Chigas, acknowledged to me to be the president of Three Seas Holding, Inc., an Illinois Corporation, is 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 said instrument as his own free and voluntary act and as the free and voluntary act of said corporation.

GIVEN under my hand and Notarial Seal this 6<sup>th</sup> day of October, 1999.

Barbara A. Martin  
NOTARY PUBLIC

My Commission Expires:

05/12/02



**ACKNOWLEDGEMENT**

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

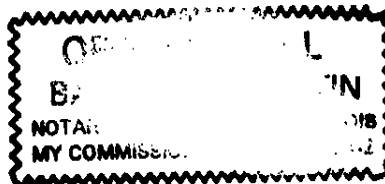
On this 6<sup>th</sup> day of October, 1999 before me, a Notary Public in and for said County and State, appeared RICHARD KONST to me personally known, who being by me duly sworn, did say that the foregoing instrument was signed and delivered by him as his own free and voluntary act for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Barbara A. Martin  
NOTARY PUBLIC

My Commission Expires:

05/12/02



# UNOFFICIAL COPY

OFFICIAL SEAL  
BARBARA A. MARTIN  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 06/15/2025

OFFICIAL SEAL  
BARBARA A. MARTIN  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 06/15/2025

OFFICIAL SEAL  
BARBARA A. MARTIN  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 06/15/2025

Property of Cook County Clerk's Office

**ACKNOWLEDGEMENT**

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On this 6<sup>th</sup> day of October, 1999 before me, a Notary Public in and for said County and State, appeared VICTOR CHIGAS to me personally known, who being by me duly sworn, did say that the foregoing instrument was signed and delivered by him as his own free and voluntary act for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Barbara A Martin  
NOTARY PUBLIC

My Commission Expires:

05/12/02



**ACKNOWLEDGEMENT**

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On this 6<sup>th</sup> day of October, 1999 before me, a Notary Public in and for said County and State, appeared MARK SCHWARTZ to me personally known, who being by me duly sworn, did say that the foregoing instrument was signed and delivered by him as his own free and voluntary act for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Barbara A Martin  
NOTARY PUBLIC

My Commission Expires:

05/12/02





UNOFFICIAL COPY

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OFFICIAL SEAL  
BARBARA A. MARTIN  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 02/28/2025

OFFICIAL SEAL  
BARBARA A. MARTIN  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 02/28/2025

EXHIBIT "A"  
THE MORTGAGED PROPERTY

LEGAL DESCRIPTION

LOT 2 (EXCEPT THE SOUTH 50 FEET THEREOF) IN THE SUBDIVISION OF LOTS 1, 4, 5 AND 8 (EXCEPT THE SOUTH 50 FEET OF LOT 8) IN BLOCK 46 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Common Address of Property:

118 North Clinton Street, Chicago, Illinois

Permanent Tax Identification Number:

17-09-332-015

Property of Cook County Clerk's Office

EXHIBIT B

RATIFICATION AND MODIFICATION OF GUARANTY

Property of Cook County Clerk's Office