

200212230266
Skagit County Auditor
12/23/2002 Page 1 of 13 3:10PM

AFTER RECORDING RETURN TO:

BANK OF AMERICA, N.A.
Commercial Special Assets
WA1-501-29-20
800 Fifth Avenue, 29th Floor
Seattle, WA 98124-1401
Attention: Ryan Mortenson

FIRST AMERICAN TITLE CO.

55812

Document Title(s) (or transactions contained therein): (all areas applicable to your document <u>must</u> be filled in): Second Loan Modification Agreement	
Reference Number(s) of Related Documents: 9810260086 and 200109050101 Additional reference numbers on page ____ of document	
Grantor(s) (Last name first, then first name and initials): JMJ INVESTMENTS, Inc. <input type="checkbox"/> <input type="checkbox"/> Additional names:	
Grantee(s) (Last name first, then first name and initials): Bank of America, N.A. <input type="checkbox"/> <input type="checkbox"/> Additional names on page ____ of document.	
Legal description (abbreviated: i.e. lot, block, plat or section, township, range): SECTION 29, TOWNSHIP 34, RANGE 4; PORTION SW 1/4 Full Legal Description Appears on <u>Exhibit A</u>	
Assessor's Property Tax Parcel/Account Number:	340429-3-020-0102 (P28731); 340429-3-020-0201 (P28732)

SECOND LOAN MODIFICATION AGREEMENT

THIS SECOND LOAN MODIFICATION AGREEMENT ("Agreement") is made to be effective as of December 2, 2002, by and between:

"Lender" BANK OF AMERICA, N.A.

"Borrower" MJM INVESTMENTS, INC., a Washington corporation

"Guarantor" JAMES NELSON and MARK NELSON

with respect to the following facts:

A. On or about October 9, 1998, Lender loaned to Borrower the principal sum of \$705,000.00 (the "**Loan**"), which Loan is evidenced by a Promissory Note ("**Note**"), together with all modifications, extensions, restatements and revisions thereof, and secured by a Deed of Trust ("**Deed of Trust**") made by Borrower as Grantor, recorded October 26, 1998, in Skagit County, Washington, under recording number 9810260086, and constituting a first lien encumbrance on the real and personal property and fixtures (the "**Property**") described in the Deed of Trust or in any UCC financing statement filed with respect thereto. The Loan was modified by that certain Loan Modification Agreement dated August 31, 2001 and recorded under Skagit County Recording No. 200109050101. The loan documents described in this paragraph and other documents evidencing and securing the Loan are collectively described as the "**Loan Documents**."

B. Borrower and Lender desire to modify the Loan as provided in and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived herefrom, it is agreed:

1. **Recitals.** The above recitals are true and correct and together with the Loan Documents, are by this reference incorporated into this Agreement as though fully set forth.

2. **Modification of Loan Documents.** Lender and Borrower agree that the Loan and Loan Documents shall be modified as follows:

(a) **Note.** The Note is hereby amended as follows:

(i) The Maturity Date (as defined in Section 1 of the Note) is January 15, 2003, at which time the Loan shall be due and payable in full.

(ii) Section 2(b) of the Note is deleted in its entirety and replaced with the following"

"The interest rate is a rate per year equal to the Prime Rate plus 3.0 percentage points. "Prime Rate" means that rate of interest announced by Lender from time to time as its prime rate. The Prime Rate is not necessarily the lowest rate of interest charged by Lender to any classification of Lender's customers. Each time the Prime Rate changes, a contemporaneous change shall occur in the interest rate charged to Borrower on the principal amount of the Note, effective upon the announcement or publication of any such change in rate. Lender shall not be obligated to notify Borrower of



any change in the Prime Rate. The Prime Rate is, however, available upon inquiry of Lender."

(b) **Amendment to Other Documents.** Borrower agrees to sign and deliver or cause to be signed and delivered to Lender such other documents as Lender may require to complete the modifications to the loan described herein.

3. **Representations and Warranties.** To induce Lender to enter into this Agreement, Borrower represents and warrants:

(a) Borrower has full legal power and authority to enter into this Agreement, that all necessary consents and approvals for the execution and performance of this Agreement have been obtained, and when signed and delivered to Lender this Agreement will be the legal binding and enforceable obligation of Borrower.

(b) Borrower owns and is vested in title to all of the Property described in the Deed of Trust or otherwise securing payment of the Loan and, except for the lien of real estate taxes and assessments not yet due, tenants in possession under leases approved by Lender or which are subordinate to the Deed of Trust, and other exceptions to title approved in writing by Lender, there exists no lien, charge or encumbrance against the Property created or arising subsequent to the recording date of the Deed of Trust.

(c) The unpaid principal balance of the Loan as of the effective date of this Agreement is \$542,636.00, and Borrower has no defense, claim or setoff, legal or equitable, to the full payment and performance of Borrower's obligations to Lender under the Loan Documents as herein modified.

(d) Borrower acknowledges that Borrower has read this Agreement and all other documents required by Lender in connection with this Agreement, is familiar with their respective terms and conditions, and has had the opportunity for advice of counsel of Borrower's own selection in regard to the terms, meaning and effect of this Agreement and all such other documents. Borrower further acknowledges that Borrower has made this Agreement freely and voluntarily, without duress, and in reliance on no promise or representation of Lender or by which Lender is bound not expressly set forth herein.

4. **Conditions.** Lender's agreement to modify the Loan as provided herein is subject to satisfaction of each of the following conditions by not later than December 2, 2002, time being of the essence. Each condition is for the exclusive benefit of Lender and may be waived by Lender but any waiver must be in writing and signed by Lender in order to be effective.

(a) There is no uncured event of default under the Loan, nor any event or condition which, with notice or the passage of time or both, would be an event of default under the Loan.



(b) Datedown and mortgage modification endorsements, in form satisfactory to Lender, shall have been added to Lender's loan policy of title insurance ("**Loan Policy**") for the Deed of Trust, bringing the effective date of the Loan Policy current to the effective date of this Agreement and insuring that the modifications provided for herein shall not impair the continued validity, priority and enforceability of the Deed of Trust.

(c) This Agreement and all other documents and agreements required by Lender have been fully signed, acknowledged and delivered to Lender and, if required by Lender, filed of record.

(d) Satisfaction of all other conditions and requirements to modification of the Loan, if any, as may be contained in a letter, exhibit list or other written communication by Lender to Borrower.

5. **Release.** As additional consideration for the modification of the Loan as herein set forth, Borrower does hereby release and forever discharge Lender, every participant in the Loan, and each and every of their respective employees, agents, directors, officers, subsidiaries, parent corporations and affiliates (collectively the "**Released Parties**"), of and from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which Borrower may have or claim to have against the Released Parties or any of them as of the effective date of this Agreement, whether presently known or unknown, on account of or in any way concerning, arising out of or founded upon the Loan including, but not limited to, all such loss or damage of any kind heretofore sustained, or that may arise as a consequence of the dealings between the parties up to and including the effective date of this Agreement. This release and the covenants herein on the part of Borrower are contractual and not a mere recital, and the parties agree that no liability is admitted except Borrower's indebtedness to Lender under the Loan Documents and that all agreements and understandings between Borrower and Lender concerning the Loan are expressed and embodied in the Loan Documents, as modified hereby.

6. **General.**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement between Borrower and Lender with respect to the foregoing modification of the Loan and shall not be amended except in writing signed by Lender and Borrower.

(b) **Guaranty.** Payment and performance of Borrower's obligations under the Loan and the Loan Documents is unconditionally guaranteed by (i) James Nelson under that certain Unconditional Guaranty of Payment and Performance, dated October 9, 1998 and (ii) Mark Nelson under that certain Unconditional Guaranty of Payment and Performance, dated October 9, 1998 (each, a "Guarantor") (jointly and severally if more than one Guarantor). By their signatures to this Agreement each Guarantor acknowledges and agrees that Guarantor's Guaranty is in full force and effect and that the modifications contained in this Agreement do



not in any way impair the continued validity of the Guaranty or of Guarantor's liability thereunder.

(c) **Ratification.** As modified herein the Loan Documents are ratified and affirmed and shall be and remain in full force and effect. Borrower shall promptly pay and perform as and when due all of Borrower's obligations under the Loan Documents and this Agreement. This Agreement is not intended to and shall not be construed to impair the validity, priority or enforceability of the Deed of Trust or the other Loan Documents.

(d) **Cross-Default.** Borrower shall be in default under this Agreement and the Loan Documents if a default occurs under any other indebtedness now or hereafter owing to Lender on which Borrower or any Guarantor is a maker or a guarantor, and such default is not cured within the applicable cure period, if any, under the instruments evidencing and securing such indebtedness.

(e) **Lender's Expenses.** Borrower shall pay all costs and expenses of Lender incurred in connection herewith including, without limitation, credit report fees, appraisal and internal appraisal review fees, title insurance charges, escrow and recording fees, document preparation charges, and charges of outside legal counsel and allocated cost of in-house legal counsel.

(f) **Lease Subordination.** The Property is leased to and occupied by Nelson Distributing, Inc., a Washington corporation ("Tenant"), under a lease (the "Lease") which is in all respects subject and subordinate to the encumbrance of the Deed of Trust. By its signature hereto, Tenant represents, warrants and confirms to Lender:

(i) The Lease has not, since the date of the Deed of Trust, been modified or amended except as has been disclosed in writing to Lender.

(ii) The Lease is in full force and effect and the respective obligations of the Landlord and Tenant thereunder are in all respects current and not in default.

(iii) Tenant will give Lender prompt written notice of any default by Landlord and for which Tenant will exercise any right to terminate the Lease or to withhold, setoff or abate the rent, and shall provide to Lender a reasonable period of time in which Lender may, in its sole and absolute discretion, cure such default.

(iv) The Lease, Tenant's leasehold interest, and any other right, legal or equitable, which Tenant may now have or hereafter acquire in or to the Property or to use or occupy the Property is and shall at all times be and remain unconditionally subject and subordinate to the Deed of Trust and to any and all renewals, modifications and extensions thereof and including, without limitation, any and all renewals, modifications, extensions, replacements, discharges or releases, in whole or in part, of the obligations secured by the Deed of Trust and/or the other Loan Documents



(g) **Governing Law.** This Agreement shall be construed and enforced under the laws of the State of Washington. In any action or proceeding to construe or enforce this Agreement or any of the Loan Documents, the prevailing party shall recover its costs and reasonable attorneys' fees including those incurred in any trial or arbitration proceeding, in any bankruptcy or receivership proceeding, and in any appeal therefrom.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

Made to be effective as of the date first set forth above.

LENDER:

BANK OF AMERICA, N.A.

By: Rita Anderson
Its: AVP

By: Thomas L. Brown
Its: SVP

BORROWER:

JMJ INVESTMENTS, INC.,
a Washington corporation

By: Mark Nelson
Its: President

GUARANTOR:

James C. Nelson
JAMES NELSON

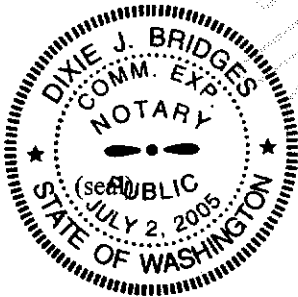
Mark Nelson
MARK NELSON



STATE OF WASHINGTON)
)ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that Ryan Mortenson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it as the Assistant Vice President of BANK OF AMERICA, N.A., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/19/02



Dixie J. Bridges
(Print Notary Name) DIXIE J. BRIDGES
Notary Public in and for the State of Washington
residing at Benton, WA
My appointment expires 7/2/05

STATE OF WASHINGTON)
)ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that Thomas E. Brown is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it as the Vice President of BANK OF AMERICA, N.A., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/19/02



Dixie J. Bridges
(Print Notary Name) DIXIE J. BRIDGES
Notary Public in and for the State of Washington
residing at Benton, WA
My appointment expires 7/2/05



(g) **Governing Law.** This Agreement shall be construed and enforced under the laws of the State of Washington. In any action or proceeding to construe or enforce this Agreement or any of the Loan Documents, the prevailing party shall recover its costs and reasonable attorneys' fees including those incurred in any trial or arbitration proceeding, in any bankruptcy or receivership proceeding, and in any appeal therefrom.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

Made to be effective as of the date first set forth above.

LENDER:

BANK OF AMERICA, N.A.

By: _____

Its: _____

By: _____

Its: _____

BORROWER:

JMJ INVESTMENTS, INC.,
a Washington corporation

By: Mark J. Nelson

Its: President

GUARANTOR:

James C. Nelson
JAMES NELSON

Mark J. Nelson
MARK NELSON

TENANT:

NELSON DISTRIBUTING, INC.,
a Washington corporation

By: Mr. J. Nelson

Its: Vice president



STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that MARK J. NELSON is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it as the PRESIDENT of JMJ INVESTMENTS, INC., a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/2/02



William J. Kelly
(Print Notary Name) William J. Kelly
Notary Public in and for the State of Washington
residing at EDMONDS WA
My appointment expires 10/15/05

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that MARK J. NELSON is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it as the VICE-PRESIDENT of NELSON DISTRIBUTING, INC., a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/02/02



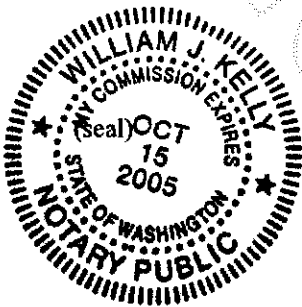
William J. Kelly
(Print Notary Name) William J. Kelly
Notary Public in and for the State of Washington
residing at EDMONDS WA
My appointment expires 10/15/05



STATE OF WASHINGTON)
)ss.
COUNTY OF Snohomish)

I certify that I know or have satisfactory evidence that JAMES NELSON is the person who appeared before me, and said person acknowledged that he signed this instrument, and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/2/02



(Print Notary Name) William J. Kelly
Notary Public in and for the State of Washington
residing at Edmonds WA
My appointment expires 10/15/05

STATE OF WASHINGTON)
)ss.
COUNTY OF Snohomish)

I certify that I know or have satisfactory evidence that MARK NELSON is the person who appeared before me, and said person acknowledged that he signed this instrument, and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/2/02



(Print Notary Name) William J. Kelly
Notary Public in and for the State of Washington
residing at Edmonds WA
My appointment expires 10/15/05



EXHIBIT A

Legal Description

The land referred to herein is situated in the County of SKAGIT, State of Washington, and is described as follows:

Parcel "A":

That portion of the Southwest 1/4 of Section 29, Township 34 North, Range 4 East, W.M., described as follows:

Beginning at a point 50 feet southeasterly (when measured radially) from Highway Engineer's Station F 9 2+00, as shown on Washington State Highway Department Right-of-Way Map SR 5 MP222.08 to MP225.62, Johnson Road to Blackburn Street, Sheet 9 of 23 sheets, latest revision date September 10, 1971, said point being on a 250 foot radius curve concave to the Southeast, a radial at said point bearing South 74 degrees 58' 06" East; thence Northerly along said curve 132.00 feet; thence South 45 degrees 07' 01" East, 145.49 feet to a point on the Northwesternly margin of the DL Ramp, as shown on said Map; thence South 24 degrees 15' 30" West, 96.00 feet to a point 110 feet Northerly from (when measured at right angles to) Highway Engineer's Station A16+00; thence South 84 degrees 40' 07" West, 100.50 feet to a point 100 feet Northerly from (when measured at right angles to) Highway Engineer's Station A15+00; thence North 18 degrees 34' 00" West, 91.47 feet to the point of beginning.

Parcel "B":

That portion of the Southwest 1/4 of Section 29, Township 34 North, Range 4 East, W.M., Skagit County, Washington, described as follows:

Commencing at a point 50 feet Southeasterly (when measured radially) from Highway Engineer's Station F9 2+00, as shown on Washington State Highway Department Right-of-Way Map SR5 MP222.08 to MP225.62, Johnson Road to Blackburn Street, Sheet 9 of 23 sheets, latest revision date, September 10, 1971, said point being on a 250 foot radius curve concave to the Southeast, a radial at said point bearing South 74 degrees 58' 06" East; thence Northerly along said curve, 132.00 feet to the true point of beginning; thence South 45 degrees 07' 01" East, 145.49 feet to a point on the Northwesternly margin of the DL Ramp, as shown on said map; thence North 24 degrees 15' 30" East along said Northwesternly margin, 256.63 feet to a point 250 feet Westerly (when measured radially) from Station 67+00 on the centerline of said SR5; thence North 20 degrees 02' 30" East, 125.54 feet to a point 50 feet Southeasterly (when measured radially) from Station F9 7+50, as shown on said map, said

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point being on a 500 foot radius curve concave to the Northwest, a radial at said point bearing North 58 degrees 44' 02" West; thence Southerly along said curve, 158.07 feet to a point 50 feet Southeasterly (when measured at right angles) from Station F9 PCS+57.74; thence South 49 degrees 22' 45" West, 179.90 feet to a point 50 feet Southeasterly from Station F9 PT3+79.85, said point being the point of curvature of a 250 foot radius curve to the left; thence Southerly along said curve 17.87 feet to the true point of beginning.

