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2002-08-28 09:43:23  
Cook County Recorder 33.00

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c/o Builders Bank  
Suite 3100  
77 West Wacker Drive  
Chicago, Illinois 60601



## SECOND MODIFICATION OF MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

This **SECOND MODIFICATION OF MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT** (the "**Agreement**") is entered into as of the 19<sup>th</sup> day of August, 2002, by **SOUTHPORT & FULLERTON, LLC**, an Illinois limited liability company ("**Borrower**") and **BUILDERS BANK**, an Illinois banking corporation ("**Lender**").

### RECITALS

WHEREAS, Borrower executed and delivered to Lender that certain Mortgage Note dated February 26, 2001, in the original principal amount of One Million One Hundred Twenty-Five Thousand and No/100 Dollars (\$1,125,000.00) (the "**Original Note**") which Original Note was modified by that certain First Mortgage Note Modification Agreement dated as of July 30, 2002, by and between Borrower and Lender (the "**First Note Modification**"; the Original Note as modified by the First Note Modification is hereinafter referred to as the "**Note**"). The loan described in the Note (the "**Loan**") and Borrower's obligations thereunder are secured by, among other things, that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated May 30, 2001, from Borrower in favor of Lender, and recorded with the Cook County Recorder on July 16, 2001 as Document No. 0010628845 (the "**Original Mortgage**"), which Original Mortgage was modified by that certain First Modification of Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated as of July 30, 2002, by and between Borrower and Lender (the "**First Mortgage Modification**"; the Original Mortgage as modified by the First Mortgage Modification is hereinafter referred to as the "**Mortgage**"). The Mortgage secures the real property described on **Exhibit A** attached hereto.

WHEREAS, Borrower now desires to modify the Mortgage to, among other things, include additional covenants regarding Borrower's rights to modify that certain Operating Agreement of Borrower dated May 3, 2001 (as modified, the "**Operating Agreement**"), and to further limit Borrower's rights to remove or appoint any Manager (as defined in the Operating Agreement), any Operational Manager (as defined in the Operating Agreement), and/or any Tax Matters Person (as

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defined in the Operating Agreement) under the Operating Agreement; and

WHEREAS, Lender, the legal owner of the Note and of the liens securing the same, at the request of Borrower has agreed to modify the Mortgage as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower and Lender hereby agree to modify and renew the Mortgage as follows:

1. Representations and Warranties.

- a. Financial Statements. Borrower represents and warrants that all financial statements of Borrower heretofore delivered to Lender are true and correct representations of the financial condition of Borrower as of the date thereof, and there has been no material adverse change thereto except as indicated by financial statements subsequently delivered to Lender.
- b. Violation of Laws. Borrower is not in violation of any laws (including, without limitation, environmental laws and regulations) which could have any effect whatsoever upon the validity, performance or enforceability of any of the terms, covenants and conditions of the Note, the Mortgage, this Agreement, or any instrument executed in connection herewith or therewith. As used in this Agreement, the term "laws" shall include any and all laws, statutes, ordinances rules, regulations, orders, writs, injunctions and decrees.
- c. Taxes. Except as previously disclosed to Lender, Borrower has paid any and all federal, state, local and other taxes, assessments, fees and other governmental charges imposed upon Borrower or Borrower's assets which are due and payable.
- d. Disclosure of Adverse Facts. Borrower represents and warrants that there are no material adverse facts or conditions relating to the finances and business of Borrower which have not been related in writing to Lender.
- e. Lawful Authority. Borrower possesses all necessary and lawful authority and power to carry on its business and comply with the terms, covenants and conditions of the Note, the Mortgage, this Agreement, and any other instrument executed in connection herewith or therewith.
- f. No Defaults, Offsets, etc. Borrower represents and warrants that: (i) there are no events or circumstances currently existing which constitute a default under any of the loan documents evidencing the Loan or which would, upon the giving of notice and expiration of any applicable cure period, constitute a default under any of the loan documents evidencing the Loan; and (ii) there are no offsets, counterclaims or defenses with respect to the Note, the Mortgage, as modified hereby or any of the other loan documents evidencing the Loan.

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2. Default. Any default under or breach of the terms and provisions of this Agreement shall also constitute a default under the Note, Mortgage, and any other security instrument executed in connection therewith or herewith.
3. Additional Covenants. Borrower agrees that until such time as the Note has been paid in full and the lien of Mortgage has been released in accordance with the terms thereof, unless Lender has previously consented in writing, such consent to be granted in Lender's sole and absolute discretion, Borrower shall not, and shall not allow its members and/or managers to, (a) cause any Manager, Operational Manager or Tax Matters Person to be removed, (b) appoint any new Manager, Operational Manager or Tax Matters Person of the Borrower, (c) cause the number of Managers under the Operating Agreement to be modified, or (d) amend the Operating Agreement.
4. Continuing Effect; Ratification. Except as expressly modified as contemplated herein, Borrower expressly ratifies the terms and provisions of the Mortgage and acknowledges and agrees that such terms and provisions shall continue in full force and effect and shall be binding on Borrower and Borrower's successors and assigns.
5. Costs and Expenses. Borrower shall pay any and all costs and expenses, including, without limitation, attorneys' fees and title charges, incurred by Lender in connection with or arising as a result of this Agreement, including, without limitation, the preparation and negotiation of this Agreement, and any other document required in connection herewith.
6. Final Agreement. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.
7. Conflicts. In the event of any conflict between the terms of this Agreement and any other document evidencing, securing or relating to the loan evidenced by the Note, the terms of this Agreement shall control.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**BORROWER:**

**SOUTHPORT & FULLERTON, LLC**, an Illinois limited liability company

By: Alan Dean

Its: MANAGER

**LENDER:**

**BUILDERS BANK**, an Illinois banking corporation

By: Michelle Boyd

Its: Chairman

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STATE OF Illinois )  
 ) SS.  
COUNTY OF Cook )

The foregoing instrument was acknowledged by me this 19th day of August, 2002 by Alan Freeman, of **SOUTHPORT & FULLERTON, LLC**, an Illinois limited liability company. He/She has produced his/her drivers license as identification.

GIVEN under my hand and notarial seal as of the 19th day of August, 2002.

Michael A. Brennan  
Notary Public

My commission expires: \_\_\_\_\_

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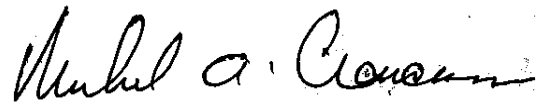
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STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF COOK            )

I, Michael A. Crawford, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Mitchell Sagwitz, personally known to me to be the Chairman of **BUILDERS BANK**, is the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he has signed and delivered the said instrument as his free and voluntary act as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19th day of August, 2002.

Notary Public



My commission expires:

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**Exhibit A**  
**Legal Description**

LOT 10 IN RESUBDIVISION OF BLOCK 6 IN LILL AND HEIRS' OF DIVERSEY DIVISION OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. No. 14-29-125-051

COMMON ADDRESS: 2836 NORTH SOUTHPORT, CHICAGO, ILLINOIS

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