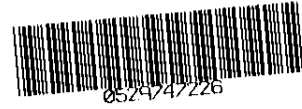


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Prior Recording Information
0334934194; and 0334934195



Doc#: 0529747226 Fee: \$44.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/24/2005 12:59 PM Pg: 1 of 11

**Prepared by and
after recording return to:**

Mitchell Cohen, Esq.
Ohio Savings Bank
1801 East Ninth Street, Ste. 200
Cleveland, Ohio

Loan No: 4850-336644

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FIRST LOAN MODIFICATION AGREEMENT

This First Loan Modification Agreement (the "First Modification") is made and entered into as of September 21st, 2005 (the "Effective Date"), by and among, Southport Properties, LLC, a Delaware limited liability company, whose mailing address is 2315 N. Southport, Chicago, IL 60614 (hereinafter referred to as the "Borrower"), Adrian Winick ("Guarantor") and **OHIO SAVINGS BANK**, a federally chartered savings bank (the "Lender")

RECITALS

A. Lender has made a loan to Borrower in a principal amount not to exceed \$1,490,383 (the "Loan") pursuant to the terms of a Construction Loan Agreement dated as of October 3, 2003 by and between Borrower and Lender (the "Loan Agreement"). The Loan is evidenced by the following promissory notes:

(i) a certain Mortgage Note dated as of October 3, 2003 (as amended, restated or replaced from time to time, "Original Note") made by Borrower and payable to Lender in the stated principal amount of One Million Four Hundred Ninety Thousand Three Hundred Eighty Three Hundred Dollars (\$1,490,383,000.00); and

B. The Loan was secured by, among other documents:

(i) a certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of October 3, 2003 and filed of record in the office of the Cook County, Illinois Recorder of Deeds on ~~October 15,~~ ^{December} 2003 as Document No. 0334934194 (the "Mortgage") encumbering the "Premises" (as defined therein), including but not limited to the real estate legally described on Exhibit A attached hereto;

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(ii) a certain Assignment of Rents and Leases dated as of October 3, 2003 and filed of record in the office of the Cook County, Illinois Recorder of Deeds on ~~October~~ ^{December} 15, 2003 as Document No. 0334934195 (the "Assignment") encumbering the Premises;

(iii) an Unconditional and Continuing Guaranty Agreement dated October 3, 2003 executed and delivered by Guarantor to the Lender (the "Guaranty")

(iv) by certain other documents and instruments (all collectively referred to herein as the "Original Security Documents").

C. Borrower and Guarantor have requested that Lender agree to increase the facility evidenced by the Original Note to \$1,590,383 and Lender has agreed to do so pursuant to the terms of (i) this First Modification, and (ii) that certain Amended and Restated Mortgage Note of even date herewith (as amended, restated or replaced from time to time, "Amended Note,") amending and restating in its entirety the Original Note and delivered by Borrower to Lender concurrently with the execution and delivery of this First Modification.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and for other valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals set forth above are true and correct and are incorporated herein by reference.

2. Defined Terms. All capitalized terms not defined in this First Modification shall have the same meanings as set forth in the Loan Agreement. Whenever the context requires, the singular shall mean the plural, and the masculine shall mean and include the feminine, neuter or plural, as the case may be. The terms "herein," "hereof," and/or "hereunder" or similar terms used in this First Modification refer to this entire First Modification and not to the particular provision in which the term is used. Unless otherwise stated, all references herein to Sections, Subsections, paragraphs, subparagraphs or other provisions are references to sections, subsections, paragraphs, subparagraphs or other provisions of this First Modification.

3. Modification of Definitions. Effective as of the Effective Date, the Loan Documents are hereby amended and modified such that all references in the Loan Documents to the following defined terms shall be deemed to have the meaning ascribed to them below:

(a) Loan Documents. The term "Loan Documents" shall have the meaning ascribed to it in the Loan Agreement and shall be deemed to include the First Modification and the Amended Note, and any and all references in the Loan Documents to any Loan Document by whatever nomenclature shall be deemed to refer to the referenced Loan Document as amended by the First Modification and the Amended Note.

(b) Amended Note. The term "Note or "Mortgage Note" shall mean the Amended and Restated Mortgage Note in the stated principal amount of \$1,590,383 to be executed and delivered by Borrower to Lender in conjunction with Borrower's execution and delivery of this First Modification to Lender.

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4. Change in Loan and Revolving Construction Facility Amounts. All references in any of the Loan Documents to the stated principal amount of the Loan are hereby changed to ONE MILLION FIVE HUNDRED NINETY THOUSAND THREE HUNDRED EIGHTY THREE AND NO/100 DOLLARS (\$1,590,383.00).

5. Title Policy Date Down Endorsement. Upon the execution of this First Modification by all parties hereto, Borrower shall cause (i) the recording of this First Modification in the records of the Recorder of Cook County, Illinois, and (ii) the delivery to Lender of a date-down endorsement to ~~Fier~~ Title Insurance Company Policy No. 1,590,383 (the "Title Policy") (a) increasing the stated principal amount of the Title Policy to \$1,590,383.00; (b) acknowledging the recording of this First Modification; (c) bringing forward the date of the policy to the date of the recording of this First Modification, and (d) showing no additional exceptions to title not previously accepted by Lender or otherwise acceptable to Mortgage in Lender's sole discretion.

6. Warranties and Representations. Borrower makes the following representations and warranties to Lender:

- (a) The recitals set forth above are true and correct;
- (b) The Loan Documents as modified by the Amended Note and this First Modification are the legal, valid, binding, enforceable and collectible obligations of the respective parties thereto, and none of the Borrower has any existing claim, defense or right of offset, personal or otherwise, with respect to the Amended Note or any other Loan Document;
- (c) the Mortgage has been duly recorded in the proper records for the county and state in which the corresponding property is located, and represents the first and best lien on the property described therein, subject only to such encumbrances expressly permitted by Lender;
- (d) All warranties and representations contained in the Loan Documents remain true, correct and complete, all covenants, terms and conditions of the Loan Documents remain satisfied or have been performed, and no default or event of default or event which with notice or lapse of time or both would constitute an event of default exists under or with respect to any Loan Document;
- (e) Borrower is duly organized and validly existing under the laws of Illinois and duly qualified to do business and in good standing in the State of Illinois; all actions required to be taken by Borrower in connection with the execution, delivery and performance of this First Modification and the Amended Note have been taken, and the execution and delivery and performance of this First Modification and the Amended Note by each does not conflict with any organizational document of any such entity or with any agreement to which any such entity is subject; and
- (f) All information, documents, reports, statements, financial statements, and data submitted by or on behalf of Borrower in connection with the Loan, or in support thereof, are true, accurate, and complete in all material respects, to the best of Borrower's

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knowledge, information and belief, as of the date made and contain no knowingly false incomplete or misleading statements.

7. Fees, Expenses and Taxes. At the time of execution and delivery of this First Modification, the Borrower shall pay to Lender all reasonable costs, fees and expenses incurred by Lender in connection with this First Modification and the Amended Note, including without limitation all reasonable legal fees and expenses, title insurance and recording fees.

8. Ratification and Release. Borrower hereby expressly waive, release and absolutely and forever discharge Lender and its affiliates and their respective shareholders, directors, officers, employees, agents, attorneys and insurers, and the respective heirs, personal representatives, successors and assigns of any of the foregoing, from any and all liabilities, claims, demands, damages, actions and causes of action that Borrower may now have or has ever had prior to the date hereof, including, without limiting the generality of the foregoing, any and all liability, claims, demands, damages, actions and causes of action arising out of, or in any way connected with, the Loan, its administration, any prior modifications or extensions thereof, or any negotiations or discussions relating thereto.

9. Entire Agreement. This First Modification and the Amended Note, together with the other Loan Documents and other agreements referenced herein and other agreements executed in connection herewith, set forth all of the covenants, promises, agreements, conditions and understandings of the parties hereto with respect to the matters described herein. No alteration, modification, amendment, change or addition to this First Modification shall be effective unless the same is in writing and signed by all of the parties hereto.

10. Not a Novation. It is the intent of the Borrower, Lender and Guarantor that this First Modification and/or the Amended Note shall not constitute a novation or in any way adversely affect the lien or operation of the Mortgage and/or any other Loan Document with respect to the Premises.

11. Conditions Precedent to Effectiveness of First Modification. The conditions listed below are precedent to any obligation of the Lender to amend the Loan Documents as provided above and shall be complied with in form and substance satisfactory to the Lender prior to October 31st, 2005:

(a) This First Modification shall be duly authorized, executed, acknowledged and delivered to Lender by all parties thereto;

(b) The Amended Note shall be duly authorized, executed, acknowledged and delivered to Lender by all parties thereto;

(c) Payment by Borrower of all costs, fees and expenses incurred by Lender in connection with this First Modification and the Amended Note, including without limitation all legal fees, appraisal fees, title insurance and recording fees.

(d) Resolution of any other legal matters incidental to the transactions contemplated by this First Modification and the Amended Note in a manner satisfactory to Lender and Lender's counsel.

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So long as any of the above conditions remain unsatisfied, or if all of the above conditions are not satisfied on or before October ~~3~~³¹, 2005, this First Modification shall be void and of no force and effect.

12. Consent and Reaffirmation of Guarantor. Guarantor, for good and valuable consideration, does hereby

(a) Consent to all of the terms and condition in this First Modification and the Amended Note.

(b) Warrant and represent to Lender the Guaranty remains the legal, binding enforceable and collectible obligation of Guarantor and Guarantor does not have any existing claim, defenses, right of offset or otherwise, with respect thereto.

(c) agree that none of the terms, conditions and agreements contained in the First Modification and the Amended Note shall impair, prejudice, hinder or impede Lender's ability to exercise any rights or remedies it may have against Guarantor.

13. No Waiver. No extension, postponement, forbearance, delay or failure on the part of Lender in the exercise of any power, right or remedy under the Notes or any other Loan Document or instrument executed in connection therewith or evidencing or securing the Loan, or at law or in equity, shall operate as a waiver thereof, nor shall a single or partial exercise of any power, right or remedy preclude other or further exercise thereof or the exercise of any other power, right or remedy. Neither the acceptance of any payment nor the making of any concession by Lender at any time during the existence of a default shall be construed as a waiver of any continuing default or of any of Lender's rights or remedies. All powers, rights and remedies of Lender shall be cumulative, and may be exercised simultaneously or from time to time in such order and manner as Lender may elect. No waiver of any condition or covenant of Borrower or of the breach of any such covenant or condition shall be deemed to constitute a waiver of any other covenant or condition or of any subsequent breach of such covenant or condition or justify or constitute a consent to or approval by Lender of any violation, failure or default by Borrower of the same or any other covenant or condition contained in the Notes or any other Loan Document.

14. Further Assurances. The Borrower covenants and agrees that until all indebtedness evidenced by the Notes has been paid in full, Borrower will upon the request of the Lender promptly perform or cause to be performed any and all acts, execute or cause to be executed any and all documents (including without limitation, estoppel certificates, subordination agreements, consents, financing statements and continuation statements) for filing or recording under the provisions of any applicable law or any other legal requirement which may be necessary or convenient to more effectively and completely carry out the intention of this First Modification and the Amended Revolving Note.

15. Governing Law. This First Modification and the Amended Note and the other Loan Documents and the performance of all covenants, conditions and terms hereof and thereof shall be governed by and interpreted in accordance with the laws of the State of Illinois.

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16. Captions. The captions and headings herein shall be solely for convenience of reference and in no way define, limit or describe the scope or intent of any provisions or sections of this First Modification.

17. Counterparts. This First Modification may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument; but in making proof of this First Modification, it shall only be necessary to produce or account for the counterpart executed by the party against which enforcement is sought.

18. Successors and Assigns. This First Modification shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, but may not be assigned by Borrower, and any such attempted assignment shall be void.

19. Severability. If any term, clause or provision of this First Modification, the Amended Note or any Loan Document shall be determined by any court to be illegal, invalid or unenforceable, the illegality, invalidity or unenforceability of such term, clause or provision shall not affect the legality, validity or enforceability of the remainder thereof or of any other term, clause or provision hereof or in any such Loan Document, and this First Modification, the Amended Note and each such Loan Document shall be construed and enforced as if such illegal, invalid or unenforceable term, clause or provision had not been contained herein or therein, and all covenants, obligations and agreements contained herein or in any Loan Document shall be enforceable to the full extent permitted by law.

20. Limited Modification. Except to the limited extent expressly provided herein, the Notes, the Loan Agreement, the Mortgage and each of the other Loan Documents shall remain in full force and effect, and all parties originally liable or obligated with respect thereto shall remain so liable or obligated with respect to such Loan Documents, as heretofore modified and as modified hereby. The Premises shall remain in all respects subject to the lien, charge and encumbrance of the Loan Documents, and nothing herein and nothing done pursuant hereto, shall affect or be construed to affect the lien, charge and encumbrance of, or warranty of title in, any of said Loan Documents, nor the priority thereof over other liens, charges, encumbrances or conveyances. This First Modification shall not release or affect the liability of any party or parties who may now or hereafter be liable under or on account of any of the Loan Documents. If any obligation of any party or parties who may now or hereafter be liable under or on account of any of the Loan Documents is determined to be void or unenforceable on account of this First Modification and/or the modification of the Loan Documents as contemplated by this First Modification, the Borrower, as an additional and independent obligation, hereby jointly and severally agree to indemnify and hold harmless Lender against and from all loss, cost, damage or expense (including attorney's fees, whether or not litigation has been commenced and in all trial, bankruptcy and appellate proceedings) suffered or incurred by Lender as a result of any such obligation being void or unenforceable. Whenever possible, this First Modification shall be read to harmonize, rather than conflict, with any term or provision contained in the Loan Documents which is not specifically modified by this First Modification. This First Modification constitutes a modification and not a novation. In the event of any inconsistency between the terms and conditions of any Loan Document (including the Notes) and this First Modification or the

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Amended Revolving Note, the terms and provisions of this First Modification and the Amended Revolving Note shall govern and control.

21. Waiver of Strict Construction Against Drafting Party. Should any provision contained in this First Modification or in the Amended Note be subject to judicial interpretation, the parties agree that the court interpreting or considering such provision should not apply any presumption or rule of construction that the terms of a document be more strictly construed against the party which itself or through its counsel or other agent prepared the same, as all parties hereto have participated in the preparation of the final form of this First Modification and the Amended Revolving Note through review by their respective counsel and the negotiation of changes in language in any provision deemed unsuitable or inadequate as initially written, and, therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.

22. Consent to Jurisdiction. TO INDUCE LENDER TO ENTER INTO THIS FIRST MODIFICATION, BORROWER AND GUARANTORS IRREVOCABLY AGREE THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS FIRST MODIFICATION OR ANY OTHER LOAN DOCUMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. BORROWER AND GUARANTORS HEREBY CONSENT AND SUBMIT TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVE PERSONAL SERVICE OF PROCESS UPON BORROWER, AND AGREE THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO BORROWER AT THE ADDRESS STATED FOR NOTICE TO THE BORROWER IN THE LOAN AGREEMENT AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

23. Waiver of Jury Trial. BORROWER, GUARANTOR AND LENDER, HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS FIRST MODIFICATION, ANY OTHER LOAN DOCUMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS FIRST MODIFICATION OR ANY OF THE FORGOING DOCUMENTS, OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS FIRST MODIFICATION OR OTHER LOAN DOCUMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AND GUARNATOR AGREE THAT THEY WILL NOT ASSERT ANY CLAIM AGAINST LENDER OR ANY OTHER PERSON INDEMNIFIED UNDER THE LOAN DOCUMENTS ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

24. Additional Waivers. BORROWER AND GUARANTOR EACH EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY

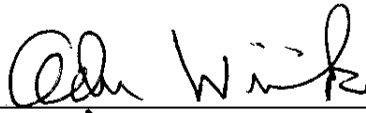
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SUIT, ACTION OR PROCEEDING BROUGHT BY LENDER UNDER THIS FIRST MODIFICATION, ANY OTHER LOAN DOCUMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS FIRST MODIFICATION OR ANY OF THE FORGOING DOCUMENTS, ANY AND EVERY RIGHT THEY MAY HAVE TO (a) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH COUNTERCLAIM MUST BE ASSERTED IN SUCH PROCEEDING, AND (b) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS REQUIRED BY THE APPLICABLE RULES OF COURT.


IN WITNESS WHEREOF, the parties have caused this First Modification to be effective as of the Effective Date.

BORROWER:

SOUTHPORT PROPERTIES, LLC,
a Delaware limited liability company

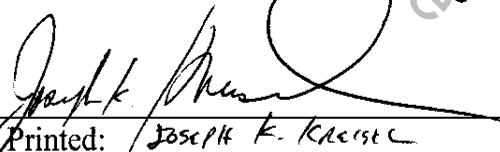
By: 
Name Printed: ADRIAN WINICK
Title: PRESIDENT

GUARANTOR:


Adrian Winick

LENDER:

OHIO SAVINGS BANK, a federal savings bank

By: 
Name Printed: JOSEPH K. KACISTE
Its: VICE PRESIDENT

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STATE OF OHIO)
) SS.
COUNTY OF COOK)

I, Jeannette Robinson a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, the _____ of Ohio Savings Bank, a federally chartered savings bank, 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 signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of Ohio Savings Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 21 day of September, 2005.

Jeannette Robinson
NOTARY PUBLIC

(SEAL)



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EXHIBIT A
LEGAL DESCRIPTION

THE EAST ½ OF LOT 78 AND ALL OF LOT 79 IN ALBERT WISNER'S SUBDIVISION OF THE SOUTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

TAX NO. 14-20-329 029-0000, VOL. 484

ADDRESS: 1438 WEST BELMONT AVE. CHICAGO, ILLINOIS

Property of Cook County Clerk's Office