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Doc#: 0717044036 Fee: \$44.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/19/2007 12:45 PM Pg: 1 of 11

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FIRST MODIFICATION OF LOAN DOCUMENTS

THIS FIRST MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 10th day of December, 2006, by and among **IONEL CAPALNAS** and **CRISTINA CAPALNAS** (jointly, "Mortgagor"), and **FIRST MIDWEST BANK**, an Illinois banking corporation ("Lender").

RECITALS:

A. Lender has heretofore made to Mortgagor a loan in the maximum principal amount of Six Million Nine Hundred Twenty Four Thousand and No/100 Dollars (\$6,924,000.00) (the "7777 Loan"). Repayment obligations of Mortgagor with respect to the 7777 Loan are evidenced by that certain Secured Term Promissory Note dated as of April 25, 2005 made by Mortgagor, jointly and severally, in favor of Lender (as the same may be amended, restated, modified or supplemented and in effect from time to time the "7777 Note"). This Mortgage, the 7777 Note and all other documents in favor of Lender to evidence or secure the 7777 Loan, as each may be amended, restated, modified or supplemented and in effect from time to time, are hereafter collectively referred to herein as the "7777 Loan Documents".

This document prepared by and after recording return to:

Diana Y. Tsai, Esq.
Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

Permanent Index Numbers:

10-30-201-004-0000

Address of Property:

7777 North Caldwell Avenue
Niles, Illinois 60714

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B. Lender has also heretofore made to 7847 Developers LLC, an Illinois limited liability company ("7847 Developers"), a loan in the maximum principal amount of Three Million Nine Hundred Thousand and No/100 Dollars (\$3,900,000.00) (the "7847 Loan"). Repayment obligations of 7847 Developers with respect to the 7847 Loan are evidenced by that certain Secured Term Promissory Note dated as of April 25, 2005 made by 7847 Developers in favor of Lender (as the same may be amended, restated, modified or supplemented and in effect from time to time, the "7847 Note"). The 7847 Loan is secured, by among other things, that certain Mortgage, Assignment of Leases and Rents, Security Agreement and UCC Fixture Financing dated as of April 25, 2005 made by 7847 Developers in favor of Lender (as the same may be amended, restated, modified or supplemented from time to time, the "7847 Mortgage") encumbering the real property described therein. The 7847 Mortgage, the 7847 Note and all other documents in favor of Lender which evidence or secure the 7847 Loan, as each may be amended, restated, modified or supplemented and in effect from time to time, are collectively referred to herein as the "7847 Loan Documents".

C. Lender has also heretofore made to Cole Taylor Bank, not personally, but solely as Trustee ("Cole Taylor Trustee"), under that certain Trust Agreement dated June 10, 1996, and known as Trust No. 96-4074 ("Cole Taylor Trust Agreement"), Parkway Bank and Trust Company, not personally, but solely as Trustee ("Parkway Trustee"), under that certain Trust Agreement dated June 17, 1997, and known as Trust No. 11707 ("Parkway Trust Agreement") and Mortgagor (together with the Cole Taylor Trustee and the Parkway Trustee are collectively referred to herein as the "Irving Park Borrowers") a loan in the maximum principal amount of One Million Seven Hundred Sixty Thousand and No/100 Dollars (\$1,760,000.00) (the "Irving Park Loan"). Repayment obligations of the Irving Park Borrowers with respect to the Irving Park Loan are evidenced by that certain Secured Term Promissory Note dated as of April 25, 2005 made by the Irving Park Borrowers in favor of Lender (as the same may be amended, restated, modified or supplemented and in effect from time to time, the "Irving Park Note"). Cristina Capalnas executed in the Irving Park Note in her capacity individually and as the sole beneficiary under the Cole Taylor Trust Agreement and Parkway Trust Agreement. The Irving Park Loan is secured, by among other things, that certain Mortgage, Assignment of Leases and Rents, Security Agreement and UCC Fixture Financing Statement dated as of April 25, 2005 made by the Cole Taylor Trustee in favor of Lender (as the same may be amended, restated, modified or supplemented and in effect from time to time, the "Cole Taylor Mortgage") encumbering the real property described therein, that certain Mortgage, Assignment of Leases and Rents, Security Agreement and UCC Fixture Financing Statement dated as of April 25, 2005 made by Mortgagor in favor of Lender (as the same may be amended, restated, modified or supplemented and in effect from time to time, the "Capalnas Mortgage") and that certain Mortgage, Assignment of Leases and Rents, Security Agreement and UCC Fixture Financing Statement dated as of April 25, 2005 made by the Parkway Bank Trustee in favor of Lender (as the same may be amended, restated, modified or supplemented and in effect from time to time, the "Parkway Mortgage") encumbering the real property described therein. The Irving Park Note, the Cole Taylor Mortgage, the Capalnas Mortgage, the Parkway Mortgage and all other documents in favor of Lender to evidence or secure the Irving Park Loan, as each may be amended, restated, modified or supplemented and in effect from time to time, are hereafter collectively referred to as the "Irving Park Loan Documents".

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D. Lender has also heretofore made the following loans (collectively, the "A-American Custom Flooring Loans") to A-American Custom Flooring, Inc., an Illinois corporation ("A-American Custom Flooring"): (i) revolving loans in the original principal amount of up to Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) (the "A-American Custom Flooring Revolving Loans") pursuant to that certain Loan and Security Agreement by and between A-American Custom Flooring and Lender (as amended, restated, modified or supplemented and in effect from time to time, the "A-American Custom Flooring Loan Agreement"), and as evidenced by that certain Secured Revolving Promissory Note made by A-American Custom Flooring in favor of Lender in the principal amount of \$2,500,000.00 (as the same may be amended, restated, modified or supplemented and in effect from time to time, the "A-American Custom Flooring Revolving Note"); and (ii) a term loan in the original principal amount of Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00) (the "A-American Custom Flooring Term Loan") pursuant to the A-American Custom Flooring Loan Agreement, and as evidenced by that certain Secured Term Promissory Note made by A-American Custom Flooring in favor of Lender in the principal amount of \$350,000.00 (as the same may be amended, restated, modified or supplemented and in effect from time to time, the "A-American Custom Flooring Term Note"). The A-American Custom Flooring Loan Agreement, A-American Custom Flooring Revolving Note, A-American Custom Flooring Term Note and all other documents in favor of Lender which evidence or secure the A-American Custom Flooring Loans, as each may be amended, restated, modified or supplemented and in effect from time to time, are hereafter collectively referred to as the "A-American Custom Flooring Loan Documents".

E. Lender has also heretofore made revolving loans (the "A-American Contractors Loans") in the original principal amount of up to One Million and No/100 Dollars (\$1,000,000.00) to A-American Contractors & Suppliers, Inc., an Illinois corporation ("A-American Contractors"), pursuant to that certain Loan and Security Agreement by and between A-American Contractors and Lender (as amended, restated, modified or supplemented and in effect from time to time, the "A-American Contractors Loan Agreement"), as evidenced by that certain Secured Revolving Promissory Note made by A-American Contractors in favor of Lender in the principal amount of \$1,000,000.00 (as the same may be amended, restated, modified or supplemented and in effect from time to time, the "A-American Contractors Note"). The A-American Contractors Loan Agreement, A-American Contractors Note and all documents in favor of Lender which evidence or secure the A-American Contractors Loans, as each may be amended, restated, modified or supplemented and in effect from time to time, are hereafter collectively referred to as the "A-American Contractors Loan Documents".

F. The 7777 Loan, the 7847 Loan, the Irving Park Loan, the A-American Custom Flooring Loans and the A-American Contractors Loans (collectively, the "Loans") are secured by, among other things, that certain Mortgage, Assignment of Leases and Rents, Security Agreement and UCC Fixture Financing Statement dated as of April 25, 2005, from Mortgagor to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on April 28, 2005, as Document No. 0511803155 (the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and Leases dated as of April 25, 2005, from Mortgagor to Lender and recorded in the Recorder's Office on April 28, 2005, as Document No. 0511803156 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity

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Agreement dated as of April 25, 2005 from Mortgagor, A-American Custom Flooring and A-American Contractors to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the 7777 Loan Documents, the 7847 Loan Documents, the Irving Park Loan Documents, the A-American Custom Flooring Loan Documents, the A-American Contractors Loan Documents, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loans, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

G. A-American Custom Flooring and Lender are concurrently herewith entering into that certain Second Amendment to Loan and Security Agreement and Ancillary Agreements (the "A-American Custom Flooring Second Amendment") pursuant to which, among other things, the maximum outstanding amount of the A-American Custom Flooring Revolving Loans is being increased from Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) to Three Million and No/100 Dollars (\$3,000,000.00), which A-American Custom Flooring Revolving Loans are evidenced by that certain Second Amended and Restated Secured Revolving Promissory Note dated as of even date herewith made by A-American Custom Flooring in favor of Lender in the principal amount of Three Million and No/100 Dollars (\$3,000,000.00) (as amended, restated, modified or supplemented and in effect from time to time, the "A-American Custom Flooring Second Amended and Restated Note").

H. A-American Contractors and Lender are concurrently herewith entering into that certain Second Amendment to Loan and Security Agreement and Ancillary Agreements (the "A-American Contractors Second Amendment") pursuant to which, among other things, Lender is making a new term loan to A-American Contractors in the principal amount of One Hundred Thousand and No/100 Dollars (\$100,000.00) (the "A-American Contractors Term Loan"), which Term Loan is evidenced by that certain Secured Term Promissory Note dated as of even date herewith made by A-American Contractors in favor of Lender in the principal amount of One Hundred Thousand and No/100 Dollars (\$100,000.00) (as amended, restated, modified or supplemented and in effect from time to time, the "A-American Contractors Term Note").

I. Mortgagor desires to amend the Loan Documents in order to provide that the Mortgage, the Assignment of Leases and the Indemnity Agreement secure, in addition to the Loans, the A-American Custom Flooring Second Amended and Restated Note, the A-American Contractors Term Loan and the A-American Contractors Term Note.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Mortgage, Assignment of Leases and Indemnity Agreement Secures Restructured/Additional Loans.** The Mortgage, the Assignment of Leases and the Indemnity Agreement are hereby modified to provide that the Mortgage, the Assignment of Leases and the Indemnity Agreement additionally secures the A-American Custom Flooring Second Amended

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and Restated Note, the A-American Contractors Term Loan and the A-American Contractors Term Note. All references in the Mortgage, the Assignment of Leases and the Indemnity Agreement and the other Loan Documents to "Loan" and "Loans" and "Notes" shall include the A-American Contractors Term Loan, and the A-American Contractors Term Note and the A-American Custom Flooring Second Amended and Restated Note, respectively. All references to "Loan Agreement" in the Mortgage shall refer to the Loan Agreement, as amended by the Second Amendment.

2. **Representations and Warranties of Mortgagor.** Mortgagor hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Mortgage, the Assignment of Leases, the Indemnity Agreement and the other Loan Documents to which they are a party are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Mortgage or the other Loan Documents and Mortgagor does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Mortgagor enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Mortgagor or any other party whose financial statement has been delivered to Lender in connection with the Loans from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Mortgagor has no claims, counterclaims, defenses, or set-offs with respect to the Loans or the Loan Documents as modified herein.

(f) This Agreement has been duly executed and delivered on behalf of Mortgagor.

3. **Title Policy.** As a condition precedent to the agreements contained herein, Mortgagor shall, at its sole cost and expense, cause the applicable title insurance company to issue an endorsement to Lender's existing title insurance policy (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

4. **Reaffirmation of Collateral Assignment of Beneficial Interest.** Cristina Capalnas (the "Beneficiary") hereby ratifies and affirms (i) that certain Collateral Assignment of Beneficial Interest in Land Trust dated as of April 25, 2005 made by the Beneficiary in favor of Lender with respect to that certain Trust Agreement dated as of June 17, 1997 and known as Trust No. 11707 with Parkway Bank and Trust Company (as amended, restated, modified or

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supplemented and in effect from time to time, the "Parkway Bank Collateral ABI"), and (ii) that certain Collateral Assignment of Beneficial Interest in Land Trust dated as of April 25, 2005 made by the Beneficiary in favor of Lender with respect to that certain Trust Agreement dated as of June 10, 1996 and known as Trust No. 96-4074 with Cole Taylor Bank ("Cole Taylor Bank Collateral ABI", and together with the Parkway Bank Collateral ABI, the "Collateral ABIs"), and reaffirms the grant of the security interest in and assignment to Lender of all rights and interests of the Beneficiary under the Trust Agreement (as defined under the Collateral ABIs) for such purpose in all respects. The Beneficiary agrees that each of the Collateral ABIs are in full force and effect following the execution and delivery of this Agreement. The representations and warranties of the Beneficiary in the Collateral ABIs are, as of the date hereof, true and correct and the Beneficiary does not know of any default thereunder. Each of the Collateral ABIs continues to be the valid and binding obligation of the Beneficiary, enforceable in accordance with its terms. The Beneficiary further agrees that any and all references to "First Midwest Bank, N.A." in the Collateral ABIs shall mean Lender as "First Midwest Bank, an Illinois banking corporation".

5. **Expenses.** As a condition precedent to the agreements contained herein, Mortgagor shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

6. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Mortgagor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Mortgagor and Lender have contributed substantially and materially to the preparation of this Agreement, and Mortgagor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Mortgagor nor shall privity of contract be presumed to have been established with any third party.

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(d) Mortgagor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Mortgagor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Mortgage", the "Assignment of Leases" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Mortgage, the "Assignment of Leases" and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. 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, and in particular, the term "Mortgagor" shall be so construed.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of Mortgagor's obligations under this Agreement.

7. **Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act.** Lender hereby notifies Mortgagor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Mortgagor, which information includes the name and address of Mortgagor and such other information that will allow Lender to identify Mortgagor in accordance with the Act. In addition, Mortgagor shall (a) ensure that Mortgagor shall not be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loans to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

[Remainder of page intentionally left blank; signature page follows]

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IN WITNESS WHEREOF, the parties hereto have executed this First Modification of Loan Documents dated as of the day and year first above written.

LENDER:

FIRST MIDWEST BANK, an Illinois banking corporation

By: *Paul Ebert*

Name: *Paul Ebert*

Title: *VP*

MORTGAGOR:

[Signature]
IONEL CAPALNAS, personally

[Signature]
CRISTINA CAPALNAS, personally

Property of Cook County Clerk's Office

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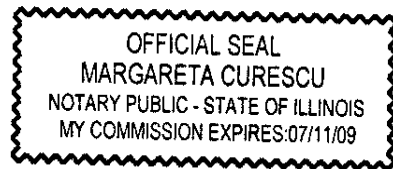
STATE OF ILLINOIS)
) .ss
COUNTY OF _____)

I Margareta Curescu Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that IONEL CAPALNAS, is 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 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 15 day of December, 2006.

[Signature]
Notary Public

My Commission Expires: 7/11/09



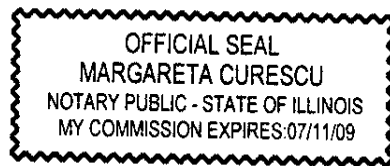
STATE OF ILLINOIS)
) .ss
COUNTY OF _____)

I Margareta Curescu, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that CRISTINA CAPALNAS, is 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 she signed and delivered said instrument as her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 15 day of December, 2006.

[Signature]
Notary Public

My Commission Expires: 7/11/09



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STATE OF ILLINOIS)
) .ss
COUNTY OF Cook)

I LORAINÉ M. MASURA, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that PAUL EBERT, the VICE PRESIDENT of FIRST MIDWEST BANK, an Illinois banking corporation, is 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 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 25th day of December, 2006.



Loraine M. Masura
Notary Public

My Commission Expires: 2-26-07

Property of Cook County Clerk's Office

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EXHIBIT A

THE PROPERTY

THAT PART OF THE WEST 18 ACRES LYING EAST OF THE EAST LINE OF CALDWELL AVENUE, OF THE EAST 48 ACRES, OF THE SOUTH 100 ACRES, OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THE SOUTH 33 FEET OF SAID PREMISES USED FOR PUBLIC HIGHWAY, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 10-30-201-004-0000

Property Address: 7777 North Caldwell Avenue
Niles, Illinois 60714