

# UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY:

Crowley & Lamb, P.C.  
350 North LaSalle Street, Suite 900  
Chicago, Illinois 60610

AFTER RECORDING RETURN TO:

Diamond Bank, FSB  
1051 Perimeter Drive  
Schaumburg, IL 60173  
Attn: Karjann B. Braga  
Senior Vice President



Doc#: 0919418099 Fee: \$52.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 07/13/2009 04:25 PM Pg: 1 of 9

This space reserved for Recorder's use only

## MODIFICATION OF LOAN DOCUMENTS

**THIS MODIFICATION OF LOAN DOCUMENTS** (this "Agreement") is made effective as of the 1<sup>st</sup> day of February, 2009, by and among **SOUTHTOWNE ENTERPRISES, LLC**, an Illinois limited liability company ("Borrower"), having an address of 1901 Union Ave., Belvidere, IL 61008, **Carl Roppolo and Anthony J. Dal Pra, II** (together, "Guarantor") and **DIAMOND BANK, FSB**, its successors and assigns, having an address as set forth above ("Lender").

### RECITALS:

A. Lender has heretofore made a construction loan (the "Loan") to Borrower in the principal amount of NINE HUNDRED SIXTY THOUSAND AND 00/100THS DOLLARS U.S. (\$960,000.00), as evidenced by a Promissory Note dated December 21, 2007, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note") issued under the terms of that certain Loan Agreement ("Loan Agreement") dated December 21, 2007 between Borrower and Lender. Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Note.

B. The Note is secured by, among other things, (i) that certain Mortgage dated December 21, 2007, from Borrower to Lender recorded with the Recorder of Deeds in Boone County, Illinois (the "Recorder's Office") on January 14, 2008 as Document No. 2008R00380 (the "Mortgage"), which Mortgage encumbers the real property and all, improvements thereon legally described on Exhibit A hereto ("Property"), and (ii) that certain Assignment of Rents and Leases dated December 21, 2007, from Borrower to Lender and recorded with the Recorder's Office on January 14, 2008 as Document No. 2008R00381 (the "Assignment of Leases"), (iii) a separate Guaranty (together, the "Guaranty") of each Guarantor dated December 21, 2007,

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guaranteeing payment and performance of all obligations of Borrower under the Note and Loan Documents (as hereinafter defined) and (iv) certain other loan documents (the Note, Loan Agreement, the Mortgage, the Guaranty, the Assignment of Leases and any and all other document evidencing, securing and guarantying the Loan, in their original form and as amended from time to time, are sometimes collectively referred to herein as the "Loan Documents").

C. The Borrower and Guarantor have requested that Lender make payments under the Note interest only and shorten the maturity date of the Note to January 5, 2010 and Lender is willing to so change the payments under and shorten the maturity date of the Note, on the terms and conditions more fully set forth hereinafter and in the Amended Note (defined below). The current outstanding principal balance of the Note is \$957,333.33.

## 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 and Borrower to modify the Loan Documents, as provided herein, (iii) Borrower's agreement to pay all of Lender's reasonable attorneys fees and costs in connection with this Agreement, (iv) the covenants and agreements contained herein, and (v) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Extension of the Maturity Date.** Lender and Borrower agree that the Maturity Date for the Loan shall hereby be amended and shortened from December 21, 2012 to January 5, 2010. All references in any and all Loan Documents to "Maturity Date" or words of similar import shall now mean January 5, 2010.
2. **Amendment of the Note.** The Note shall be amended and restated by that certain Amended and Restated Promissory Note of even date herewith executed by Borrower (the "Amended Note") in the principal amount of \$957,333.33. As of the date hereof, the Amended Note restates and replaces the Note and is not a repayment or novation of the Note. All references in any and all Loan Documents to the "Note" or words of similar import shall now mean the Amended Note. Notwithstanding any other provisions contained in any Loan Document, the payments and interest rate applicable to the Loan shall be as set forth in the Amended Note.
3. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement and the Amended Note and that the Guarantor remains liable to Lender for all amounts due in connection with the Amended Note. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.
4. **Continuing Validity.** Except as expressly modified above, the terms of the original Mortgage and the other Loan Documents shall remain unchanged and in full force and

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effect and are legally valid, binding, and enforceable in accordance with their respective terms. Consent by Lender to this Agreement does not waive Lender's rights to require strict performance of the Mortgage (as amended above) nor obligate Lender to make any future modifications. Nothing in this Agreement shall constitute a satisfaction of the promissory notes or other credit agreement secured by the Mortgage. It is the intention of Lender to retain as liable all parties to the Mortgage and all parties, makers and endorsers to the Amended Note, including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall not be released by virtue of this Agreement. If any person who signed the original Mortgage does not sign this Agreement, then all persons signing below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing person consents to the changes and provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension or modification, but also to all such subsequent actions.

5. **Borrower and Guarantor's Releases.** Borrower and Guarantor, in consideration of the execution of this Agreement, and the performance of all terms contained herein to be performed by Lender, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, do hereby remise, release and forever discharge, and by these presents, do for their successors, assigns, heirs, administrators, executors, personal representatives, agents, grantees, and successors in interest, remise, release and forever discharge Lender and its respective successors, assigns, heirs, administrators, officers, personal representatives, attorneys, agents and successors in interest, from all actions, suits, causes of action, damages, expenses, liabilities, claims, accounts and demands, whatsoever, whether or not well-founded in fact or in law which they have, have had, or at any time may have, could have, or might have but for the execution of this Agreement, asserted against Lender, for or by reason of or in respect of any matter, cause or thing whatsoever, whether known or unknown, developed or undeveloped, past, present or future or whether permanent, continuing or otherwise, arising out of or connected with the Loan, the Amended Note, the Loan Documents or this Agreement.

6. **Representations and Warranties of Borrower and Guarantor.** Borrower and Guarantor hereby represent, covenant and warrant to Lender as follows.

- (a) The representations and warranties in the Amended Note, the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.
- (b) There is currently no Event of Default (as defined in the Loan Documents) under the Amended Note, the Mortgage or the other Loan Documents and none of the Borrower or Guarantor 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 Amended Note, 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 Borrower and Guarantor 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 Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in

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connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, neither Borrower nor Guarantor have any claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) The execution and delivery of this Agreement, the Amended Note and the performance of the Loan Documents, as modified herein, have been duly authorized by all requisite action by or on behalf of Borrower and Guarantor. This Agreement and the Amended Note have been duly executed and delivered on behalf of Borrower and Guarantor, as applicable, and are the legal, valid and binding obligations of Borrower and Guarantor, as applicable, enforceable in accordance with their terms.

7. **Title Policy.** At Lender's request, Borrower shall, at its sole cost and expense, cause the applicable title company ("Title Company") to issue an endorsement to Lender's 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.

8. **Expenses.** As a condition precedent to the agreements contained herein, Borrower 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.

9. **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 Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledge and waive 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

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Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor 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 Borrower, Guarantor 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 "Note", the "Mortgage", or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Amended Note, the Mortgage, 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.

(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 Guarantor's and Borrower's obligations under this Agreement.

[SIGNATURE PAGE ATTACHED]

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

**BORROWER:**

**SOUTHTOWNE ENTERPRISES, LLC**, an Illinois limited liability company

By: Carl Roppolo  
Carl Roppolo, manager

By: Anthony J. Dal Pra  
Anthony J. Dal Pra, II, manager

**LENDER:**

**DIAMOND BANK, FSB**

By: Quann B. Baga  
Its: SVP

**GUARANTOR:**

Carl Roppolo  
Carl Roppolo, individually

Anthony J. Dal Pra  
Anthony J. Dal Pra, II, individually



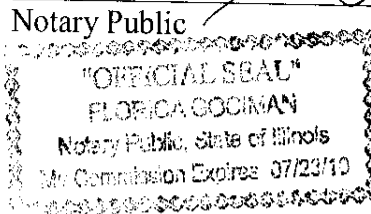
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, THE UNDERSIGNED, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that KARIANN BRAGA S, VICE president of Diamond Bank, FSB, known to me to be the same person whose name is subscribed to the foregoing instrument as such S. U. President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary acts, and as the free and voluntary act of Diamond Bank, FSB, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 30 day of JUNE, 2009.

*[Handwritten Signature]*



My Commission Expires:

07/23/2010

\*\*\*\*\*

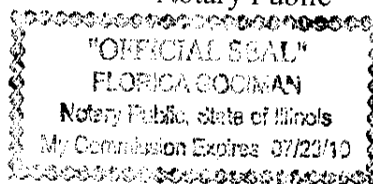
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, THE UNDERSIGNED, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Carl Roppolo and Anthony J. Dal Pra, II, individually and as managers of SOUTHTOWNE ENTERPRISES, LLC and known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of such company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 30 day of JUNE, 2009.

*[Handwritten Signature]*

Notary Public



My Commission Expires:

07/23/2009

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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

ALL OF LOTS 17, 19, 21, 22, 23, 24 AND THE SOUTHERLY 44 FEET OF LOT 20 AND THE NORTHERLY 11 FEET OF LOTS 25 AND 26 ALL IN BLOCK 4 OF FULLER AND FOOTE'S SUBDIVISION OF BLOCK 5 OF SYNDICATE ADDITION TO HIGHLAND AS PLATTED AND RECORDED IN THE RECORDER'S OFFICE OF BOONE COUNTY, ILLINOIS. EXCEPTING THEREFROM: THE SOUTHERLY 22 FEET OF LOT 22 AND ALL OF LOT 24 AND THE NORTHERLY 11 FEET OF LOT 26, ALL IN BLOCK 4 IN FULLER AND FOOTE'S SUBDIVISION, BEING A SUBDIVISION OF BLOCKS 5 OF SYNDICATE ADDITION TO HIGHLAND, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 30, 1900 IN BOOK 2 OF PLATS ON PAGE 22, IN BOONE COUNTY, ILLINOIS; SITUATED IN BOONE COUNTY, ILLINOIS.

#### PARCEL 2:

ALL OF LOTS 18 AND 20 AND PART OF LOTS 17 AND 19 IN BLOCK 3 AS DESIGNATED UPON THE PLAT 6 OF FULLER AND FOOTE'S SUBDIVISION OF BLOCK 5 OF SYNDICATE ADDITION TO HIGHLAND, THE PLAT OF WHICH SUBDIVISION IS RECORDED IN BOOK 2 OF PLATS ON PAGE 22 IN THE RECORDER'S OFFICE OF BOONE COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT THE NORTHWEST CORNER OF LOT 18 IN SAID BLOCK 3: THENCE NORTH 89 DEGREES 52 MINUTES 58 SECONDS EAST, ALONG THE NORTH LINE OF LOTS 18 AND 17 IN BLOCK 3, A DISTANCE OF 229.67 FEET TO A POINT WHICH IS 100 FEET DISTANT WESTERLY FROM THE NORTHEAST CORNER OF LOT 17 IN SAID BLOCK 3; THENCE SOUTH 00 DEGREES 56 MINUTES 15 SECONDS WEST, PARALLEL WITH THE EAST LINE OF SAID BLOCK 3, A DISTANCE OF 100.00 FEET TO THE EAST LINE OF LOT 19 IN SAID BLOCK 3; THENCE SOUTH 00 DEGREES 56 MINUTES 15 SECONDS WEST, ALONG THE EAST LINE OF LOT 19, A DISTANCE OF 32.00 FEET TO THE NORTHEAST CORNER OF LOT 21 IN SAID BLOCK 3; THENCE SOUTH 89 DEGREES 52 MINUTES 58 SECONDS WEST, ALONG THE NORTH LINE OF LOT 21 AND LOT 22 OF SAID BLOCK 3, A DISTANCE OF 329.67 FEET TO THE WEST LINE OF SAID BLOCK 3; THENCE NORTH 00 DEGREES 56 MINUTES 11 SECONDS EAST, ALONG THE WEST LINE OF SAID BLOCK 3, A DISTANCE OF 132.00 FEET TO THE POINT OF BEGINNING; TOGETHER WITH THE FOLLOWING DESCRIBED TRACT: THE EAST AND WEST HALVES OF GARFIELD AVENUE VACATED ON APRIL 6, 1999 BY ORDINANCE NO. 283G, TO-WIT: LYING WEST OF LOTS 18 AND 20 ON BLOCK 3 OF FULLER AND FOOTE'S SUBDIVISION BOUNDED ON THE NORTH BY THE NORTH LINE OF LOT 18 EXTENDED WESTERLY TO THE EAST LINE OF BLOCK 4 OF SUCH FULLER AND FOOTE'S SUBDIVISION AND BOUNDED ON THE SOUTH BY THE SOUTH LINE OF LOT 20 EXTENDED WESTERLY TO THE EAST LINE OF SUCH BLOCK 4, IN SUCH FULLER AND FOOTE'S SUBDIVISION BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 44 NORTH, RANGE 3 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOONE COUNTY, ILLINOIS; SITUATED IN THE COUNTY OF BOONE AND THE STATE OF ILLINOIS.



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PARCEL 3:

UNIT 1 IN BUILDING 10, UNIT 4 IN BUILDING 1, UNIT 10 IN BUILDING 7, UNIT 4 IN BUILDING 7, UNIT 1 IN BUILDING 9, UNIT 4 IN BUILDING 6 AND UNIT 1 BUILDING 8 IN THE SOUTHTOWNE VILLAGE CONDOMINIUM, AS DELINEATED AND DEFINED IN THE DECLARATION RECORDED AS DOCUMENT NO. 04R11152 AS AMENDED FROM TIME TO TIME, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, IN SECTION 35, TOWNSHIP 44 NORTH, RANGE 3, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COUNTY, ILLINOIS.

P.I.N. 05-36-355-002; 05-36-355-005; 05-36-355-006; 05-35-356-006; 05-35-456-049; 05-35-456-004; 05-35-456-038; 05-35-456-040; 05-35-456-045; 05-35-456-032; AND 05-35-456-041

COMMONLY KNOWN AS:

597 SOUTHTOWNE DRIVE, BELVIDERE, IL 61008 (BUILDING 1 UNIT 4)  
653 SOUTHTOWNE DRIVE, BELVIDERE, IL 61008 (BUILDING 6 UNIT 4)  
673 SOUTHTOWNE DRIVE, BELVIDERE, IL 61008 (BUILDING 7 UNIT 2)  
669 SOUTHTOWNE DRIVE, BELVIDERE, IL 61008 (BUILDING 7 UNIT 4)  
691 SOUTHTOWNE DRIVE, BELVIDERE, IL 61008 (BUILDING 8 UNIT 4)  
693 SOUTHTOWNE DRIVE, BELVIDERE, IL 61008 (BUILDING 9 UNIT 1)  
677 SOUTHTOWNE DRIVE, BELVIDERE, IL 61008 (BUILDING 10 UNIT 1)  
1760 PEARL STREET, BELVIDERE, IL 61008