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FIRST LOAN MODIFICATION AGREEMENT



Doc#: 1121045059 Fee: \$50.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 07/29/2011 03:19 PM Pg: 1 of 8

Prepared by and mail to:

Ronald N. Lorenzini, Jr., Esq.
Lorenzini & Associates, Ltd.
1900 Spring Road, Suite 501
Oak Brook, Illinois 60523

RECORDER'S STAMP

THIS FIRST LOAN MODIFICATION AGREEMENT (this "Agreement") is made and entered into this 26 day of June, 2011 by and between GREGORY HAYNES ("Borrower") and ADVANTAGE NATIONAL BANK GROUP, a national banking association ("Bank").

RECITALS

FIDELITY NATIONAL TITLE

WHEREAS, on October 26, 2007 Bank issued a certain credit facility (the "Credit Facility") to Borrower in the original principal sum of Six Hundred Forty Thousand Dollars (\$640,000.00);

WHEREAS, the Credit Facility is currently evidenced and/or secured by the following documents (collectively referred to as the "Loan Documents") each of which, unless otherwise indicated, is made, executed and delivered by Borrower to Bank and dated October 26, 2007:

1. Promissory Note in the stated principal sum of Six Hundred Forty Thousand Dollars (\$640,000.00) (the "Original Note");
2. Mortgage (the "Mortgage") recorded on November 1, 2007 as document number 0730503053 with the Cook County Recorder encumbering the real property (the "Property") identified on Exhibit A attached hereto and incorporated herein by reference;
3. Assignment of Rents recorded on November 1, 2007 as document number 0730503054 with the Cook County Recorder encumbering the Property;
4. Business Loan Agreement (the "Business Loan Agreement");
5. Change In Terms Agreement dated February 26, 2010; and
6. Such other usual and customary documents executed in connection with the Credit Facility; and

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WHEREAS, the Credit Facility is in default as a result of the Borrower's failure to perform certain obligations under the Loan Documents including without limitation his failure to make payments under the Note and other Loan Documents when due (the "Default");

WHEREAS, as a result of the Default, the indebtedness evidenced by the Note and secured by the other Loan Documents is immediately due and payable in full; and Bank is free to pursue all rights and remedies afforded Bank ("Bank's Remedies") under the Loan Documents;

WHEREAS, in an effort to avoid the time and expense of protracted litigation and to settle matters quickly and amicably, Borrower has requested that Bank: (i) on a limited basis, waive the Default and to forbear in exercising Bank's Remedies and (ii) grant relief to the Borrower by modifying the terms of the Credit Facility; and

WHEREAS, the Bank is agreeable to forbearing in exercising Bank's Remedies and granting such request but only on the terms and conditions set forth herein.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. *Recitals*. The recitals hereto are incorporated herein by reference as fully and with the same force and effect as if each and every term, provision and condition thereof was specifically recited herein at length.

2. *Replacement Promissory Notes*. Simultaneously with the execution of this Agreement, Borrower shall execute and deliver to Bank, Replacement Promissory Note A in the principal sum of \$350,000.00 and Replacement Promissory Note B in the principal sum of \$283,312.87 (collectively (the "Replacement Notes"). Upon execution and delivery of the Replacement Notes, (a) the Original Note shall be deemed replaced; and (b) each of the other Loan Documents shall be deemed, and are hereby, modified and amended so that any and all references to the Original Note in such Loan Documents shall be deemed to be a reference to the Replacement Notes.

3. *Modification to the Mortgage*. The following provisions are added to and made a part of the Mortgage:

Waiver of the Right to Redeem, Etc. Borrower shall not and will not apply for or avail himself of any appraisal, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement of any rights or remedies of Lender under this Mortgage, but hereby waives the benefit of such laws and the benefit of any homestead or other exemptions which it may now or hereafter from time to time have with respect to the Property or the indebtedness secured hereby. Borrower for himself and all creditors, mortgagees, trustees, lien holders and other persons or entities who may claim through or under it waives any and all right to have the property and estates comprising the Property, or any part thereof, marshaled upon any foreclosure or other disposition (whether or not the entire Property be sold as a unit, and whether or not any parcels thereof be sold as a unit or separately) of any kind or nature of the Property, or any part thereof, or interest therein, and agrees that any court having jurisdiction to foreclose or otherwise enforce

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the liens granted and security interests created by this Mortgage may order the Property sold as an entirety. On behalf of Borrower, and each and every person acquiring any interest in, or title to the Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the maximum extent permitted by applicable law, Borrower hereby waives any and all rights (x) of redemption from any foreclosure, or other disposition of any kind or nature of the Property, or any part thereof, or interest therein, under or pursuant to rights herein granted to Lender, and (y) to reinstatement of the indebtedness hereby secured including, without limitation, any right to reverse any acceleration of such debt pursuant to Section 15-1602 of the Illinois Mortgage Foreclosure Law (as hereinafter defined). Borrower further waives and releases (a) all errors, defects, and imperfections in any proceedings instituted by Lender under the Note, this Mortgage or any of the other Related Documents; (b) all benefits that might accrue to the Borrower by virtue of any present or future laws exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy, or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment; and (c) all notices not specifically required by the Note, this Mortgage or any of the other Related Documents, of default, or of Lender's exercise, or election to exercise, any option under this Mortgage. All waivers by Borrower in this Mortgage have been made voluntarily, intelligently and knowingly by Borrower, after Borrower has been afforded an opportunity to be informed by counsel of Borrower's choice as to possible alternative rights. Borrower's execution of this Mortgage shall be conclusive evidence of the making of such waivers and that such waivers have been voluntarily, intelligently and knowingly made.

Deposit for Taxes. Borrower shall deposit with the Bank on each monthly payment date under the Note, an amount equal to \$1,106.75 ("Tax Deposits") which shall be applied to the _____ real estate taxes affecting the Property due in _____; provided however, upon the occurrence of an Event of Default under this Mortgage, the Lender may, at its option, without being required to do so, apply any Tax Deposits on hand to the payment of any of the indebtedness hereby secured or to pay or perform any obligations of the Borrower which shall then be in default hereunder, in such order and manner as the Lender in its sole discretion may elect. All Tax Deposits and any other monies on deposit pursuant to the terms of this Mortgage are hereby pledged as additional security for the indebtedness hereby secured and shall be held irrevocably by the Lender (or other depository) to be applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Borrower.

4. *Modifications to the Business Loan Agreement.*

A. All references to the Debt Service Coverage Ratio covenant are stricken in their entirety.

B. The following provisions are added to and made a part of the section entitled "Affirmative Covenants" of the Business Loan Agreement:

Additional Reporting Requirements. Borrower shall deliver to Lender (i) Lender's form Personal Financial Statement and rent roll of the real property (the "Property") commonly known as 8001 Muskegon, Chicago Illinois, constituting part of the Collateral, no later than thirty (30) days after the end of each calendar year and (ii) an operating statement for the

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Property no later than fifteen (15) days at the end of each quarter, effective June 30, 2011; all certified as true and correct by an officer of Borrower.

5. *Representations and Warranties of Borrower.* Borrower represents, warrants and covenants to Bank that, as of the date of, and after giving effect to, this Agreement, (a) Borrower has the full right, power, and authority to execute, deliver and perform his obligations under the Loan documents, as amended by this Agreement without the necessity of obtaining any consents or approvals of, or the taking of any other action with respect to any third parties (or if such consents, approvals or other actions are required, the same have been accomplished prior to the date hereof); (b) to the best of his knowledge, no proceeding has been instituted or is pending in which any creditor of Borrower seeks to attach, sequester, or enforce any other remedies against the Property, or any part thereof, and no threat has been made by any person or entity to seek any such restraint, attachment, sequester or other remedy; (c) Borrower has not received any written notice from any federal, state or local governmental authority regarding the compliance or failure of the Property or any other collateral to be in compliance with any governmental statute, law, or ordinance; (d) there is no other default under the Loan Documents, as hereby amended and (e) there exists no condition, event or any litigation, proceedings or actions pending or to the best of their knowledge threatened, affecting Borrower or the Property, which would prevent him from complying with or performing his respective obligations under the Loan Documents, as hereby amended.

6. *Waiver of Borrower.* Borrower waives and affirmatively agrees not to challenge or otherwise pursue any or all defenses, counterclaims, causes of action, setoffs or other rights he may have now or in the future, to contest (a) any term, provision, condition or covenant of the Loan Documents, the Replacement Notes or this Agreement; (b) the right of Bank to all of the respective rents, issues, and profits from the Property; (c) the security interest of Bank in the Property or any other collateral securing the Credit Facility; or (d) the conduct of Bank in administering the Credit Facility.

7. *Continued Priority.* In the event that, by virtue of any of the terms, conditions and provisions of this Agreement, a lien otherwise junior in priority to the liens created by the Loan Documents, shall gain superiority over the liens created by the Loan Documents, this Agreement shall, at the option of Bank, *nunc pro tunc*, be null and void without further action of the parties hereto to the fullest extent as if it had never been executed, to the end that the priority of the Loan Documents shall not be impaired; provided however Borrower shall remain obligated for all indebtedness and obligations owed Bank.

8. *Conditions Precedent.* This Agreement shall not be effective unless and until: (a) Bank shall have received a duly executed original counterpart of this Agreement executed by Borrower; (b) Bank shall have received, reviewed and approved the Endorsement (as hereinafter defined); and (c) Bank shall have received any additional information or documents reasonably requested by Bank to effectuate the transactions contemplated herein.

9. *Bank Expenses.* The Borrower agrees to pay all costs, fees and expenses (including but not limited to legal fees) incurred by Bank in connection with the preparation, negotiation, closing and perfection of this Agreement and to execute any documents in regards to same. In addition the Borrower agrees to pay on demand all costs, fees and expenses, including without

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limitation reasonable attorney fees and costs in the event of enforcement by Bank of any of the terms and provisions of this Agreement.

10. *Recording.* This Agreement, at Bank's shall be recorded against the Property and a date down endorsement (the "Endorsement") to the Bank's original loan policy, insuring this Agreement, shall be issued by the respective title company, at Borrower's cost.

11. *Ratification.* The Loan Documents are hereby ratified, confirmed and approved and are and shall remain in full force and effect. Each of the Loan Documents is hereby modified and amended so that all references to such documents shall be deemed to be a reference to the Loan Documents as hereby modified and amended.

12. *Counterparts.* This Agreement may be executed simultaneously or in multiple counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one instrument.

13. *Agreement Controls.* In the event there are any inconsistencies between the terms and provisions of this Agreement and the terms and provisions of the Loan Documents, the terms and provisions of this Agreement shall control.

14. *Governing Law.* This Agreement and the other Loan Documents and all matters relating thereto shall be governed by and construed and interpreted in accordance with the internal laws of the State of Illinois.

15. *Voluntary Act.* Borrower hereby represents and warrants to the Bank that he has completely reviewed this Agreement and, after consulting with legal counsel of his own choosing, understands the legal effect hereof, and enter into this Agreement voluntarily, without coercion, duress or threat or retaliation, and of their own free will.

16. *Construction.* This Agreement shall not be construed more strictly against Bank merely by virtue of the fact that the same has been prepared by Bank or its counsel, it being recognized that Borrower and Bank have contributed substantially and materially to the preparation of this Agreement; and Borrower and Bank each acknowledge and waive any claim contesting the existence and adequacy of the consideration given by any of the other parties in entering this Agreement.

17. *Captions.* The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

18. *Enforceability.* Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

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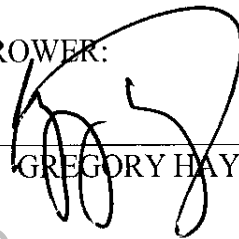
19. *Entire Agreement.* This Agreement (including any exhibits referred to herein) constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any and all prior agreements, discussions, negotiations, or understandings, whether oral or written, between the parties with respect to the subject matter hereof.

20. *Amendment, Waiver or Modification.* No amendment, waiver or modification of this Agreement shall be binding unless it is in writing signed by the parties hereto and dated subsequent to the date hereof.

21. *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of the representatives, heirs, successors and assigns of each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement this 26 day of June 2011.


BORROWER:



GREGORY HAYNES

BANK:

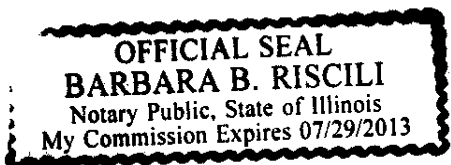
ADVANTAGE NATIONAL BANK GROUP, a national banking association


By:  SVP
Tom Peterman, Senior VP

STATE OF ILLINOIS)
) SS:
COUNTY OF Cook)

I, Barbara B. Riscili, a Notary Public, in and for said County, in the State of Illinois, do hereby certify that Gregory Haynes, who 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 official seal this 26 day of June, 2011.





Notary Public

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STATE OF ILLINOIS)

SS

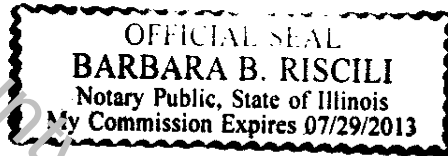
COUNTY OF Cook)

I, Barbara B. Riscili, a Notary Public, in and for said County, in the State of Illinois, do hereby certify that Tom Peterman, Senior VP of Advantage National Bank Group, a national banking association who is subscribed to the foregoing instrument as such officer, 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 said bank for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 26 day of June, 2011.

Barbara B. Riscili

Notary Public



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EXHIBIT A

THE PROPERTY

LOT 47 AND 48 IN BLOCK 14 IN WALTER S. HAINES' SUBDIVISION OF BLOCKS 2 AND 14 IN CIRCUIT COURT COMMISSIONER'S PARTITION OF THE NOTHEAST ¼ OF THE NORTHWEST ¼ AND THE NORTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 31 TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS 8001 S. MUSKEGON AVE., CHICAGO, IL 60617

PINS: 21-31-209-001-0000; 21-31-209-002-000

Property of Cook County Clerk's Office