

This Instrument Prepared By: ~~Jamil Simon Esq.~~
Please Return To: Jamil Simon, Esq.
APC
800 Third Avenue
New York, NY 10022

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97832738

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3938/0039 47 001 1997-11-05 09:50:42
Cook County Recorder 43.00

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT
(this "Modification") is entered into as of October 1, 1997 by and between Jamil Simon ("Simon"), Maple Properties Company, L.L.C., an Illinois limited liability company ("Guarantor") (Simon and Guarantor are hereinafter sometimes referred to collectively as the "Borrower"), and Dunsinane II, L.L.C., a Nevada limited liability company ("Lender").

RECITALS:

1. On August 4, 1997, Simon entered into a revolving loan arrangement with Lender allowing Simon to borrow up to the sum of Seven Hundred Fifty Thousand Dollars (\$750,000.00) (the "Loan"), and the Loan was evidenced by a Note of even date therewith made by the Borrower to Lender in the principal amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) (the "Note").
2. The current outstanding principal balance of the Note is Fifty Thousand Dollars (\$50,000.00).
3. The Loan was guaranteed by Guarantor pursuant to a Continuing Guarantee ("Guarantee") dated August 4, 1997.
4. The Note and the Guarantee were secured by the following described documents (collectively, the "Loan Documents"):
 - a. Second Mortgage made by Guarantor dated August 4, 1997 and recorded August 11, 1997, 1997 with the County Recorder of Cook County, Illinois, as Document 97584629, granting Lender a second mortgage interest in certain property located in Chicago, Illinois, commonly known as 2070 Maple Street, Des Plaines, Illinois and legally described in Exhibit A attached hereto and made a part hereof (the "Property").
 - b. Second Assignment of Rents and Lessor's Interest in Leases made by Guarantor dated August 4, 1997 and recorded August 11, 1997 with the County Recorder of Cook County, Illinois, as Document 97584630.

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- c. Security Agreement made from Guarantor to Lender dated August 4, 1997.
- d. Environmental Indemnity Agreement from Borrower to Lender dated August 4, 1997.
- e. Intercreditor Agreement dated August 4, 1997 by and between Guarantor, Lender and AM Properties Corporation, a Delaware corporation.

5. Borrower has requested that Lender decrease the amount that can be drawn under the Loan to a maximum of \$50,000 and Lender is willing to decrease the amount of said Loan, subject to the terms and conditions set forth below.

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

a. Recitals. The foregoing recitals are hereby incorporated into and made a part of this Modification Agreement.

b. Modifications to Note. The Note is hereby amended as follows:

i. the principal balance under the Note is hereby decreased from SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00) to FIFTY THOUSAND DOLLARS (\$50,000.00) which total principal amount and all interest thereon shall have the same priority as the original indebtedness secured by the Mortgage and the other Loan Documents (as hereinafter modified) and shall be subject to all of the terms and provisions of the Mortgage and the other Loan Documents (as hereinafter modified);

ii. Lender's obligation to make loan advances to Borrower equal to the amount requested by Borrower is hereby deleted;

iii. the Modification Agreement is hereby added as a "Loan Document".

c. Modifications to Guarantee. The Guarantee is hereby amended as follows:

i. all references therein to SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00) are hereby deleted and the words and number FIFTY THOUSAND DOLLARS (\$50,000.00) are substituted in lieu thereof;

d. Modifications to other Loan Documents. The other Loan Documents are hereby amended as follows:

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i. all references therein to SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00) are hereby deleted and the words and number FIFTY THOUSAND DOLLARS (\$50,000.00) are substituted in lieu thereof;

ii. the Modification Agreement is hereby added as a "Loan Document".

e. Costs and Fees. Concurrently with the execution of this Modification Agreement, Borrower shall pay to Lender all costs and expenses associated with the negotiation and execution of this Modification Agreement, including, without limitation, attorneys' fees, appraisal fees, survey and title costs, travel expenses, inspection fees and recording and escrow charges, whether incurred in connection with the Loan or the modification of the Loan pursuant to the terms of this Modification Agreement.

f. No Additional Advances. Notwithstanding anything in the Note or the Loan Documents to the contrary, Borrower shall have no right to request and Lender shall have no obligation to make any additional advances under the Note.

g. Documents to Remain in Effect: Confirmation of Obligations. The Note and the Loan Documents shall remain in full force and effect as originally executed and delivered by the parties, except as expressly modified and amended herein. All references in the Note and the Loan Documents to such documents shall be deemed to refer to the Note and Loan Documents as modified herein. Borrower hereby confirms and reaffirms all of its obligations under the Note and the Loan Documents, as modified and amended herein, and confirms and reaffirms that the Loan Documents secure the Note. To induce Lender to enter into this Modification Agreement, Borrower hereby represents, acknowledges and agrees that it does not now have or hold any defense to the performance of any of its obligations under the Note or the Loan Documents, nor does Borrower have any claim against Lender which might be set off or credited against any payments due under any of the Note or Loan Documents. Borrower further represents, acknowledges and agrees that, as of the date hereof, it does not have any actual or potential actions, claims, suits or defenses arising from any letters of intent, correspondence or other communications (oral or written) between Borrower and Lender.

h. Certifications, Representations and Warranties. In order to induce Lender to enter into this Modification Agreement, Borrower hereby certifies, represents and warrants to Lender that all certifications, representations and warranties contained in the Note and the Loan Documents and in all certificates heretofore delivered to Lender are true and correct as of the date hereof, and all such certifications, representations and warranties are hereby remade and made to speak as of the date of this Modification Agreement.

i. Additional Certifications, Representations and Warranties. In addition to the certifications, representations and warranties set forth in the Note, the Loan Documents and this Modification Agreement, Borrower hereby certifies, represents and warrants to Lender that:

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i. This Modification Agreement has been duly authorized, executed and delivered by Borrower and constitutes a valid and legally binding obligation enforceable against Borrower in accordance with its terms. The execution and delivery of this Modification Agreement and compliance with the provisions hereof and thereof under the circumstances contemplated herein and therein does not and will not conflict with or constitute a breach or violation of or default under the agreement creating Borrower or any agreement or other instrument to which Borrower or both, is a party, or by which Borrower is bound, or to which any of its properties are subject, or any existing law, administrative regulation, court order or consent decree to which Borrower is subject.

ii. There is no litigation or administrative proceeding pending or threatened to restrain or enjoin the transactions contemplated by this Modification Agreement or questioning the validity hereof or of the Loan Documents, or in any way contesting the existence or powers of Borrower, or with respect to which an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Modification Agreement.

iii. Borrower is in full compliance with all of the terms and conditions of this Modification Agreement, the Note and the Loan Documents, no event of default has occurred and is continuing with respect thereto and no event has occurred and is continuing which with the lapse of time or the giving of notice or both would constitute such an event of default, and Borrower hereby releases and waives any and all (i) existing defenses to payment of obligations under the Note, the Loan Documents and this Modification Agreement; and (ii) existing claims or causes of action which Borrower may have against Lender or its agents.

j. Not a Novation. Borrower and Lender expressly state, declare and acknowledge that this Modification Agreement is intended only to modify Borrower's continuing obligations under the Note and the Loan Documents in the manner set forth herein and is not intended as a novation.

k. Entire Agreement. This Modification Agreement sets forth all of the covenants, provisions, agreements, conditions and understandings of the parties relating to the subject matter of this Modification Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. The parties hereto hereby agree that the terms of this Modification Agreement supersede all of the terms, conditions and obligations of Lender set forth in all prior commitment letters, correspondence or other commitments (oral or written) between Borrower and Lender relating to this Modification Agreement.

l. Additional Documents. Borrower agrees to execute and deliver such other and further documents requested by Lender or its counsel to achieve the objectives of this Modification Agreement, provided such other and further documents do not obligate Borrower to provide additional collateral for or materially increase Borrower's obligations related to the Loan.

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m. Successors. This Modification Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

n. Severability. In the event any provision of this Modification Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

o. Amendments, Changes and Modifications. This Modification Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

p. Construction.

i. The words "hereof", "herein", and "hereunder", and other words of a similar import refer to this Modification Agreement as a whole and not to the individual sections in which such terms are used.

ii. The headings of this Modification Agreement are for convenience only and shall not define or limit the provisions hereof.

iii. Where the context requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

iv. Any capitalized terms not defined herein shall retain the meaning as set forth in the Loan Documents.

q. Execution of Counterparts. This Modification Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

r. Governing Law. This Modification Agreement is prepared and entered into with the intention that the law of the State of Illinois shall govern its construction and enforcement.

s. Effective Date. The effective date of this Modification Agreement shall be as of the date hereof.

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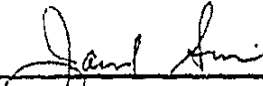
IN WITNESS WHEREOF, the parties have executed this Modification Agreement as of the date first above written.

LENDER:
DUNSINANE II, L.L.C., a Nevada limited liability company

By: 


Name: David D. Colburn
Title: Manager

BORROWER:


Jamil Simon

GUARANTOR:
MAPLE PROPERTIES COMPANY, L.L.C., an Illinois limited liability company

By: American Properties Corporation, a New Jersey corporation, its Manager

By: 
Name: Jamil Simon
Title: President

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STATE OF Illinois)
) SS.
COUNTY OF Cook)

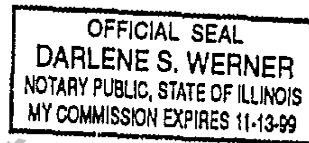
I, Darlene S. Werner, a Notary Public in and for said County, in the State aforesaid, do hereby certify that David D. Colburn, personally known to me to be a Manager of DUNSINANE II, L.L.C., a Nevada limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2nd day of October, 1997.

Darlene S. Werner
Notary Public

My Commission Expires:

11-13-99



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STATE OF NEW YORK)
) SS.
COUNTY OF NEW YORK)

I, Amy B. Klein, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Jamil Simon, President of American Properties Corporation, a New Jersey corporation, Manager of MAPLE PROPERTIES COMPANY, L.L.C., an Illinois limited liability company 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 the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation and limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 1st day of October, 1997.

Amy Klein
Notary Public

~~My Commission Expires:
_____~~

AMY KLEIN
Notary Public, State of New York
#01KL5067031
Qual. Westchr. Cty., Filed in NY Cty.
Commission Expires October 7, 1998

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COMMUNICATIONS SECTION
COUNTY CLERK'S OFFICE
100 NORTH WASHINGTON STREET
CHICAGO, ILLINOIS 60602
TELEPHONE (312) 603-1000

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EXHIBIT A

THE LAND REFERRED TO HEREIN IS DESCRIBED AS FOLLOWS:

LOT 4 AND THE EAST HALF OF LOT 5 IN TOUHY-MANNHEIM INDUSTRIAL SUBDIVISION UNIT #2
BEING A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 28 AND THE SOUTHEAST
QUARTER OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL
MERIDIAN, IN COOK COUNTY, ILLINOIS. ✓

property address:

2070 Maple Ave ✓
DesPlaines, IL.

Permanent Index Number:

09-28-300-010 ✓

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