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Doc#: 0720531030 Fee: \$42.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 07/24/2007 10:47 AM Pg: 1 of 10

After Recording Return To:
Diane Pudelek
Stewart Title of Illinois
2 N. LaSalle St., Suite 1400
Chicago, IL 60602

LOAN AND MORTGAGE MODIFICATION AGREEMENT (Fullerton)

This Loan and Mortgage Modification Agreement ("Agreement") is made and entered into as of this 22nd day of June, 2007, by and among 401 FULLERTON LLC, an Illinois limited liability company ("Fullerton"), 2933 SHERIDAN LLC, an Illinois limited liability company ("Sheridan") and 215 CHESTNUT LLC, an Illinois limited liability company ("Chestnut") (Fullerton, Sheridan and Chestnut are hereinafter collectively referred to as "Borrowers") and WILLIAM O'KANE ("William") and KAREN O'KANE ("Karen") (William and Karen are hereinafter collectively referred to as "Guarantors") and NATIONAL CITY BANK, a national banking association, successor by merger to National City Bank of the Midwest formerly known as National City Bank of Michigan/Illinois ("Lender").

WITNESSETH:

WHEREAS, Lender made a loan to Borrowers in the original principal amount of TWENTY-THREE MILLION EIGHT HUNDRED SIXTY THOUSAND DOLLARS (\$23,860,000.00) ("Loan"); and

WHEREAS, the Loan is evidenced by a Note dated June 21, 2004 executed by Borrowers and payable to the order of Lender ("Note"); and

WHEREAS, the Loan is secured, *inter alia*, by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated June 21, 2004 executed by Fullerton, and recorded on June 25, 2004, with the office of the Cook County Recorder as Document Number 0417718117 ("Mortgage") encumbering the property and improvements commonly known as 401-11 West Fullerton Parkway, Chicago, Illinois ("Property"); and

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STEWART TITLE OF ILLINOIS
Commercial Division
2 N. LaSalle St., Suite 1400
Chicago, IL 60602
312-849-4400
377348

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WHEREAS, the Loan is further secured, *inter alia*, by a Guaranty dated June 21, 2004 executed by Guarantors to and for the benefit of Lender ("Guaranty"); and

WHEREAS, Borrowers now desire to borrow from Lender an additional ONE MILLION FOUR HUNDRED TWENTY THOUSAND DOLLARS (\$1,420,000.00) on the terms hereafter provided; and

WHEREAS, Borrowers, Guarantors and Lender now desire to amend the Mortgage and Guaranty and amend and restate the Note in the manner hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, the parties hereto agree as follows:

1. **Recitals; Defined Terms.** The foregoing recitals are incorporated into this Agreement as if fully set forth herein. Except as specifically defined herein, all capitalized terms used in the recitals and in the body of this Agreement shall have the definitions ascribed therefore in the Note.
2. **Additional Proceeds.** Provided no Default exists, Lender agrees to loan to Borrowers an additional sum equal to ONE MILLION FOUR HUNDRED TWENTY THOUSAND DOLLARS (\$1,420,000.00) ("Additional Loan Proceeds"). The Additional Loan Proceeds shall be used to reimburse Fullerton for the cost of certain capital expenses made to the Property and shall be disbursed to Fullerton upon the full execution of this Agreement and the satisfaction of the conditions precedent set forth in Paragraph 8 of this Agreement.
3. **Status of Loan.** Borrowers acknowledge and agree that as of the date hereof, the outstanding principal balance of the Loan is TWENTY-THREE MILLION FIVE HUNDRED EIGHTY THOUSAND DOLLARS (\$23,580,000.00).
4. **Amended and Restated Note.** Concurrently with the execution of this Agreement, Borrowers shall execute and deliver to Lender an Amended and Restated Note of even date herewith in the principal amount of TWENTY-FIVE MILLION DOLLARS (\$25,000,000.00) (the "Amended and Restated Note"). The Mortgage, the Guaranty and the other Loan Documents are hereby modified to secure the Amended and Restated Note.
5. **Guaranty.** Paragraph 6.1 of the Guaranty is hereby amended by deleting the number "SIX MILLION DOLLARS (\$6,000,000.00)" and inserting the number "SIX MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$6,250,000.00)" in its place.
6. **Mortgage.** Paragraph 36(j) of the Mortgage is hereby amended by deleting the number "ONE HUNDRED SIXTEEN MILLION TEN THOUSAND DOLLARS (\$116,010,000.00)"

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and inserting the number "ONE HUNDRED TWENTY-TWO MILLION FIVE HUNDRED SEVENTY DOLLARS (\$122,570,000.00)" in its place.

7. **Loan Fee.** In consideration of the loan of the Additional Loan Proceeds, Borrowers shall pay to Lender a non-refundable loan fee of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) ("Loan Fee"). The unpaid balance of the Loan Fee shall be due and payable to Lender concurrently with the execution of this Agreement.

8. **Conditions Precedent.** Lender's obligations under this Agreement are expressly conditioned upon:
 - (a) The execution and delivery of this Agreement to Lender by Borrowers and Guarantors;
 - (b) Delivery to Lender of a date down endorsement and amendment to Lender's Title Insurance Policy increasing the amount to TWENTY-FIVE MILLION DOLLARS (\$25,000,000.00) and showing no exceptions thereto other than the Permitted Exceptions;
 - (c) The execution and delivery of the Amended and Restated Note; and
 - (d) Execution and delivery to Lender of such other documents as Lender shall reasonably require in connection with this Agreement.

9. **Additional Loan Expenses.** Borrowers hereby agree to pay all reasonable expenses, charges, costs and fees relating to this Agreement, including, without limitation, Lender's reasonable attorneys' fees in connection with the documentation and negotiation of this Agreement, and all other expenses, charges, costs and fees referred to or necessitated by the terms of this Agreement (collectively, the "Additional Loan Expenses"). In the event the Additional Loan Expenses are not paid to Lender within five (5) days after the written demand therefore by Lender, the Additional Loan Expenses shall bear interest from the date so incurred until paid at the Default Rate.

10. **Representations and Warranties.** Borrowers and Guarantors each represent and warrant to Lender that: (i) each has full power and authority to execute and deliver this Agreement and to perform their respective obligations hereunder; (ii) upon the execution and delivery of this Agreement, it shall be valid, binding and enforceable upon each Borrower and each Guarantor in accordance with its terms; (iii) the execution and delivery of this Agreement does not and will not contravene, conflict with, violate or constitute a default under any agreement or any applicable law, rule, regulation, judgment, decree or order, or any agreement, indenture or instrument to which each Borrower or each Guarantor is a party or by which any of said parties is bound; (iv) no Default or event or condition which would become an Default with the giving of notice and/or the passage of time, exists under the Loan

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Documents, as amended by this Agreement; and (v) there is not any condition, event or circumstance existing, or any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending, or to the best of Borrowers' or Guarantors' knowledge threatened, affecting Borrowers or Guarantors, or which could prevent any of said parties from complying with or performing its or their respective obligations under the Loan Documents, as amended by this Agreement, within the time limits set forth therein for such compliance for performance, and no basis for any such matter exists.

11. **Amendment.** Except as specifically modified by the terms of this Agreement, the terms and conditions of the Loan Documents shall be and remain in full force and effect and shall continue to govern the rights and obligations of the parties. Without in any way limiting the foregoing, Borrowers and Guarantors hereby represent and warrant that they currently know of no defenses to the enforcement of any of the Loan Documents, as modified hereby. Borrowers and Guarantors hereby restate, remake and reaffirm any and all covenants, representations and warranties contained in any of the Loan Documents, as if all such instruments had been executed as of the date hereof.

12. **General Release.** In consideration of Lender entering into this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrowers, their members and officers and Guarantors hereby release and forever discharge Lender, its past, present and future shareholders, successors, assigns, officers, directors, agents, attorneys and employees together with their respective heirs, legal representatives, legatees, successors and assigns of and from all actions, claims, demands, damages, debts, losses, liabilities, indebtedness, causes of action either at law or in equity and of whatever kind or nature, whether known or unknown, direct or indirect, new or existing as of the date hereof, by reason of any matter, cause or thing whatsoever arising out of or relating to any matter or thing whatsoever, including, without limitation, the claims asserted or which could have been asserted by Borrowers or Guarantors in connection with the transactions which are the subject of this Agreement or the Loan.
 - (a) It is acknowledged that Borrowers and Guarantors have read the General Release provisions of this Paragraph 12 and consulted legal counsel before executing same; that Borrowers have relied upon their own judgment and that of their legal counsel in executing the General Release provisions of this Paragraph 12 and have not relied on or been induced by any representation, statement or act by any other party referenced to herein which is not referred to in this instrument; that Borrowers and Guarantors enter into the General Release provisions of this Paragraph 12 voluntarily, with full knowledge of its significance; and that the General Release provisions of this Paragraph 12 are in all respects complete and final.
 - (b) If any term or provision of the General Release contained herein or the application thereof to any person, entity or circumstance shall, to any extent, be held invalid

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and/or unenforceable by a court of competent jurisdiction, the remainder of the General Release contained herein, or the application of such term or provisions to persons, entities or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of the General Release contained herein shall be valid and be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, Borrowers, Guarantors and Lender have duly authorized and executed this Loan and Mortgage Modification Agreement as of the date first above written.

BORROWERS

2933 SHERIDAN LLC, an Illinois limited liability company

By: [Signature]
Print Name: William O'Kane
Its: Manager

401 FULLERTON LLC, an Illinois limited liability company

By: [Signature]
Print Name: William O'Kane
Its: Manager

215 CHESTNUT LLC, an Illinois limited liability company

By: [Signature]
Print Name: William O'Kane
Its: Manager

GUARANTORS

[Signature]
WILLIAM O'KANE, personally

[Signature]
KAREN O'KANE, personally

LENDER

NATIONAL CITY BANK, a national banking association, successor by merger to National City Bank of the Midwest formerly known as National City Bank of Michigan/Illinois

By: [Signature]
Print Name: John Murphy
Its: Vice President

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Belinda M. Appler, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that John Murphy John Murphy of NATIONAL CITY BANK, a national banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such John Murphy, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her 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 26th day of July, 2007.



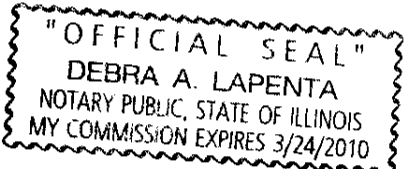
Belinda M. Appler
NOTARY PUBLIC

My Commission Expires: September 28, 2009

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Debra LaPenta, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that William O'Kane the Manager of 2933 SHERIDAN LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such William O'Kane, 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 company for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 19 day of July, 2007.



Debra A. LaPenta
NOTARY PUBLIC

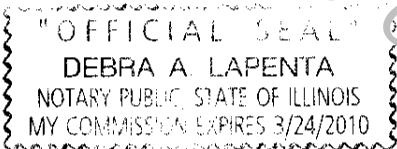
My Commission Expires: 3/24/2010

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Debra Lapenta, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that William O'Kane, the Manager of 401 FULLERTON LLC, an Illinois limited liability company, 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 said company for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 19 day of July, 2007.

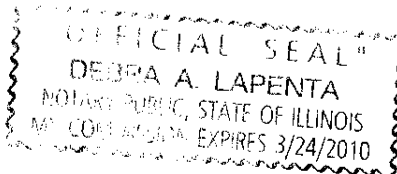


Debra A Lapenta
NOTARY PUBLIC
My Commission Expires: 3/24/2010

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Debra Lapenta, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that William O'Kane, the Manager of 215 CHESTNUT LLC, an Illinois limited liability company, 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 said company for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 19 day of July, 2007.



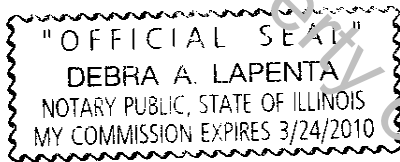
Debra A Lapenta
NOTARY PUBLIC
My Commission Expires: 3/24/2010

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Debra A LaPenta, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that WILLIAM O'KANE, 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 for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 19th day of July, 2007.



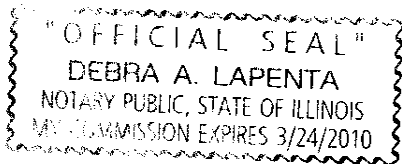
Debra A LaPenta
NOTARY PUBLIC

My Commission Expires: 3/24/2010

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Debra A LaPenta, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that KAREN O'KANE, 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 she signed and delivered the 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 14th day of July's, 2007.



Debra A LaPenta
NOTARY PUBLIC

My Commission Expires: 3/24/2010

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This instrument was prepared by ~~and after recording return to:~~

Andrew M. Sachs, Esq.
ROBBINS, SALOMON & PATT, LTD.
25 East Washington Street, Suite 1000
Chicago, Illinois 60602
(312) 782-9000

Property of Cook County Clerk's Office

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EXHIBIT "A"

LEGAL DESCRIPTION

The West 103 feet of the North 160 feet of Lot 3 and the East 57 feet of Lot 4 in Adams and Porter's Subdivision of that part of Blocks 2 and 3 lying North of East and West center line of said Blocks 2 and 3 in Canal Trustees' Subdivision in Section 33, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Common address: 401-411 West Fullerton Parkway, Chicago, Illinois 60614

PIN: 14-33-106-002-0000, 14-33-106-003-0000