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This instrument prepared by  
and please return to:

Polsinelli Shalton Flanigan Suelthaus PC  
180 N. Stetson Avenue, Suite 4525  
Chicago, Illinois 60601-6710  
Attention: Kimberly K. Enders, Esq.



Doc#: 0804403082 Fee: \$44.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/13/2008 12:00 PM Pg: 1 of 11

P.I.N.: 13-22-402-005-0000  
COMMONLY KNOWN AS: 3565 N. Milwaukee, Chicago, Illinois

## FIFTH LOAN MODIFICATION AGREEMENT

This instrument is a Fifth Loan Modification Agreement ("Fifth Modification") among First Chicago Bank & Trust, an Illinois banking corporation ("Lender"), 3565 N. Milwaukee, LLC, an Illinois limited liability company ("Borrower"), and Benjamin Reyes, David M. Hill and Fred Gonzalez (collectively "Guarantors").

### RECITALS:

A. Borrower holds fee simple title to the real estate commonly known as 3565 N. Milwaukee, Chicago, Illinois, which is legally described on Exhibit A attached hereto ("Real Estate").

B. On October 25, 2005, Lender made a loan to Borrower in the amount of Eight Hundred Twenty-Five Thousand (\$825,000.00) Dollars ("Loan"), which Loan was evidenced by a Promissory Note executed by Borrowers in the amount of Eight Hundred Twenty-Five Thousand (\$825,000.00) Dollars ("Note"), the proceeds of which were used to purchase the Real

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Estate. The Note was secured by the following documents and items (collectively the "Security Documents"):

1. a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing, which was recorded with the Cook County Recorder of Deeds on November 17, 2005 as Document No. 0532141033 ("Mortgage");
2. Guaranties of Note, Mortgage and Other Undertakings executed by Guarantors ("Guaranty");
3. a UCC Financing Statement authorized by Borrower and filed with the Secretary of State of Illinois;
4. an Environmental, ADA and ERISA Indemnification Agreement executed by Borrower and Guarantors; and
5. such other documents and items as were requested by Lender.

C. On or about May 26, 2006, Borrower, Guarantors and Lender entered into a Loan Modification Agreement ("Modification"), pursuant to which Borrower requested and Lender extended the maturity date of the Note from April 25, 2006 to October 25, 2006, to give Borrower time to market and sell the Real Estate. The Modification was recorded on June 6, 2006 with the Cook County Recorder of Deeds as Document No. 0616047130.

D. As of October 25, 2006, Borrower, Guarantors and Lender entered into a Second Loan Modification Agreement ("Second Modification"), pursuant to which Borrower requested and Lender extended the maturity date of the Note from April 25, 2006 to January 25, 2007. The Second Modification was recorded on December 26, 2006 with the Cook County Recorder of Deeds as Document No. 0636031202.

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E. On March 16, 2007, to be effective as of January 25, 2007, Borrower, Guarantors and Lender entered into a Third Loan Modification Agreement ("Third Modification"), pursuant to which Borrower requested and Lender extended the maturity date of the Note from January 25, 2007 to May 25, 2007. The Third Modification was recorded on July 5, 2007 with the Cook County Recorder of Deeds as Document No. 0718634056.

F. On June 29, 2007, to be effective as of April 25, 2007, Borrower, Guarantors and Lender entered into a Fourth Loan Modification Agreement ("Fourth Modification"), pursuant to which Borrower requested and Lender extended the maturity date of the Note from January 25, 2007 to August 25, 2007. The Fourth Modification was recorded on July 5, 2007 with the Cook County Recorder of Deeds as Document No. 0718634055

G. Borrower has now requested Lender to extend the maturity date of the Note from August 25, 2007 until November 26, 2007. Lender is agreeable to this request subject to the covenants, conditions and restrictions contained herein.

**NOW, THEREFORE**, in consideration of good and valuable consideration, the parties agree as follows:

1. Subparagraph (b) of the Note is hereby modified and amended to change the Maturity Date of August 25, 2007 to November 26, 2007. The Security Documents are hereby modified and amended to secure the Note as hereby amended and all references to the Note in the Security Documents are modified and amended to refer to the Note as hereby modified. All amounts presently outstanding on the Note shall be deemed outstanding the Note as revised hereby. All interest charged on and all payments made on the Note previously are unchanged.

2. This Fifth Modification shall be effective upon Lender's receipt of this Fifth Modification executed by the parties hereto, and the following documents and items:

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(a) a date down endorsement to Lender's loan title insurance policy covering the Mortgage as modified by this Fifth Modification, which extends the effective date of said title policy to the recording date of this Fifth Modification and insures that Borrower is the holder and owner of fee simple title to the Real Estate;

(b) updated evidence of comprehensive general public liability insurance;

(c) an Organizational Resolution regarding the Fifth Modification;

(d) a Certification of No Change to organizational documents; and

(d) evidence of Borrower's good standing with the Secretary of State of Illinois.

3. This Fifth Modification shall constitute an amendment of the Security Documents and wherever in said instruments or in any other instrument evidencing or securing the indebtedness evidenced by the Note as hereby revised and the Security Documents as hereby revised ("Loan Documents") reference is made to the Loan Documents aforesaid, such reference shall be deemed a reference to such Loan Documents as hereby modified and amended. All other provisions of the Loan Documents remain unchanged. Nothing herein contained shall in any manner affect the lien or priority of the Mortgage or the covenants, conditions and agreements therein contained or contained in the Note.

4. In the event of conflict between any of the provisions of the Loan Documents and this instrument, the provisions of this instrument shall override and control.

5. Borrower hereby renews, remakes and affirms the representations and warranties contained in the Loan Documents.

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6. Borrower hereby agrees to pay all of Lender's expenses arising out of and in connection with this Fifth Modification including, but not limited to, attorneys' fees, title insurance premiums and recording fees.

7. Guarantors hereby affirm their obligations under the Guaranty and agree that the Guaranty is amended and extended to cover and guaranty the Note as hereby revised. All references in the Guaranty to the Note shall mean the Note as revised by this Fifth Modification. Guarantors hereby expressly acknowledge and confirm that by executing this Fifth Modification, Lender has not waived, altered or modified Lender's rights under any of the Loan Documents to amend, extend, renew or modify or otherwise deal with the obligations of the parties hereto or any of the security given to Lender in connection therewith without the consent of Guarantors and without such action releasing, modifying, or affecting the obligations of Guarantors or affecting the security heretofore granted to Lender.

**8. BORROWER AND GUARANTORS KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY THE RIGHT THEY MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, THE MORTGAGE, THE SECURITY DOCUMENTS, THE MODIFICATION, THE SECOND MODIFICATION, THIS FIFTH MODIFICATION OR ANY OF THE DOCUMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH LENDER, BORROWERS AND GUARANTORS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING**

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ANY FINANCIAL ACCOMMODATION TO BORROWERS OR GUARANTORS, OR ANY OF THEM.

9. BORROWER AND GUARANTORS HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWERS AND GUARANTORS HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWER AND GUARANTORS HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. BORROWER AND GUARANTORS IRREVOCABLY CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO BORROWER AND GUARANTORS AT THEIR ADDRESSES AS SPECIFIED IN THE RECORDS OF LENDER. BORROWER AND GUARANTORS AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING, AFTER ALL APPEAL RIGHTS ARE EXHAUSTED, SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

BORROWER AND GUARANTORS AGREE NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST LENDER OR THE DIRECTORS, OFFICERS,

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**EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREINABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER AND GUARANTORS OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS; PROVIDED, HOWEVER, UNLESS LENDER IS REQUIRED BY LAW TO INSTITUTE PROCEEDINGS IN ANY OTHER JURISDICTION, LENDER SHALL FIRST INSTITUTE PROCEEDINGS IN A STATE COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS.**

10. Borrower and Guarantors warrant to Lender that neither Borrower nor Guarantors nor any affiliate are identified in any list of known or suspected terrorists published by an United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "Blocked Persons Lists") including, without limitation, (a) the annex to Executive Order 13224 issued on September 23, 2001 and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Borrower and Guarantors covenant to Lender that if they become aware that they or any affiliate are identified on any Blocked Persons List, Borrower and Guarantors shall immediately notify Lender in writing of such information. Borrower and Guarantors further agree that in the event they or any affiliate are at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Lender to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, Lender may immediately contact the Office of Foreign Assets Control and any other government agency Lender deems

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appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Lender will forbear enforcement of its rights and remedies during such time as: (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List, and (2) Lender determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of Lender and encumbering, any part of the Premises (as defined in the Mortgage) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

*Signature page follows*



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IN WITNESS WHEREOF, the parties hereto have executed this Fifth Modification on 9/27, 2007 to take effect as of August 25, 2007.

**LENDER:**

First Chicago Bank & Trust, an Illinois banking corporation

By: George Santiago  
Its: Vice President

**BORROWER:**

3565 N. Milwaukee, LLC, an Illinois limited liability company

By: Fred Gonzalez  
Fred Gonzales, managing member

**GUARANTORS:**

x Benjamin Reyes  
x David M. Hill  
x Fred Gonzalez

STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF C O O K )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that GEORGE SANTIAGO, Vice President of First Chicago Bank & Trust, an Illinois banking corporation, 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 (s)he 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 27th of Sept., 2007.

Stania Rodriguez  
Notary Public



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STATE OF ILLINOIS )  
 )  
COUNTY OF C O O K ) SS

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Fred Gonzales, individually and as managing member of 3565 N. Milwaukee, LLC, an Illinois limited liability company, 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 Sept. 27<sup>th</sup>, 2007.  
Sonia Rodriguez  
Notary Public

STATE OF ILLINOIS )  
 )  
COUNTY OF C O O K ) SS



The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Benjamin Reyes, 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 Sept. 27<sup>th</sup>, 2007.  
Sonia Rodriguez  
Notary Public

STATE OF ILLINOIS )  
 )  
COUNTY OF C O O K ) SS



The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that David M. Hill, 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 Sept. 27<sup>th</sup>, 2007.  
Sonia Rodriguez  
Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION:

LOTS 16 AND 17 IN MERCHANTS SUBDIVISION OF LOTS 8 AND 9 IN WARNER'S SUBDIVISION OF PART OF THE SOUTH EAST 1/4 OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 3565 N. Milwaukee, Chicago, Illinois 60641  
P.I.N.: 13-22-402-005-0000

Property of Cook County Clerk's Office