



Doc#: 1010929110 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/19/2010 04:24 PM Pg: 1 of 9

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: Kariann P. Fraga
Senior Vice President

This space reserved for Recorder's use only

SEVENTH MODIFICATION OF LOAN DOCUMENTS

THIS SEVENTH MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made effective as of the 22nd day of October, 2009, by and among **JOHNSON-MILLER & ASSOCIATES, LTD., an Illinois corporation**, having an address at 1734 N. Sedgwick, Chicago, Illinois 60614 ("Borrower"), **LINDA MILLER and BARRY K. JOHNSON**, having an address at 1737 North Fern Court, Chicago, Illinois 60614 (collectively "Guarantor"), and **DIAMOND BANK, FSB**, its successors and assigns, having an address as set forth above ("Lender").

RECITALS:

A. Lender made a revolving line of credit loan (the "Loan") to Borrower in the principal amount of Four Hundred Thousand and No/100ths Dollars (\$400,000.00), as evidenced by a Revolving Line of Credit Note dated November 9, 2005, in the principal amount of the Loan made payable by Borrower to the order of Lender ("\$400,000 Note") and a certain Loan and Security Agreement ("Loan Agreement") dated November 9, 2005 from Borrower in favor of the Lender, which Note and Loan Agreement were amended by that certain Amended and Restated Revolving Line of Credit Note dated October 16, 2006, in the principal amount of Six Hundred Thousand and No/100ths Dollars (\$600,000.00) made payable by Borrower to the order of Lender (the "\$600,000 Note") and that certain Revolving Line of Credit Note dated November 1, 2007 in the principal amount of \$600,000.00 made payable by Borrower to the order of Lender (the "November 1, 2007 Note"). The \$400,000 Note, the \$600,000 Note and the November 1, 2007 Note hereinafter referred to collectively as the "Prior Notes". The Prior Notes were replaced by that certain Third Amended and Restated Revolving Line of Credit Note dated January 22, 2008 in the principal amount of \$1,200,000 under the terms of that certain Third Modification of Loan Documents ("Third Modification") dated January 22, 2008 among the parties hereto, and further replaced by that certain Fourth Amended and Restated Revolving Line of Credit Note dated January 22, 2009 in the

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principal amount of \$1,200,000 under the terms of that certain Fourth Modification of Loan Documents ("Fourth Modification") dated January 22, 2009 among the parties hereto and further replaced by that certain Fifth Amended and Restated Revolving Line of Credit Note dated April 22, 2009 in the principal amount of \$1,200,000 under the terms of that certain Fifth Modification of Loan Documents ("Fifth Modification") dated April 22, 2009 among the parties hereto and further replaced by that certain Sixth Amended and Restated Revolving Line of Credit Note dated July 22, 2009 (the "Note") in the principal amount of \$1,200,000 under the terms of that certain Sixth Modification of Loan Documents ("Sixth Modification") dated July 22, 2009 among the parties hereto.

B. The Note is secured by, among other things, (i) that certain Junior Mortgage and Security Agreement dated November 9, 2005, from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on October 31, 2006 as Document No. 063044053 (the "Mortgage"), which Mortgage encumbers the real property and all, improvements thereon legally described on Exhibit A hereto ("Property"), and (ii) the personal Guaranty (the "Guaranty") of Linda Miller and Barry K. Johnson, guaranteeing payment and performance of all obligations of Borrower under the Note and Loan Documents (as hereinafter defined), (iii) a Continuing Security Agreement ("Security Agreement") and separate Credit Agreement ("Credit Agreement") from Borrower in favor of Lender, (iv) a Subordination Agreement from Linda Miller and Barry K. Johnson in favor of the Lender, (v) an Intellectual Property and Security Agreement ("IP Agreement") dated January 22, 2008 executed by Borrower in favor of Lender and (vi) certain other loan documents (the Note, the Mortgage, the Loan Agreement, the Guaranty, the Credit Agreement, the Security Agreement, the IP Agreement, the Third Modification, the Fourth Modification, the Fifth Modification, Sixth Modification, all prior modifications of the Loan Documents and any and all other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Note matures by its terms on October 22, 2009. Borrower desires to amend the Loan Documents to extend the maturity of the Loan until January 22, 2010 and Lender is willing to so modify the maturity date of the Loan, on the terms and conditions more fully set forth hereinafter and in the Amended Note (defined below).

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 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. **Amendment of Note.** The Note shall be amended and restated by that certain Seventh Amended and Restated Revolving Line of Credit Note of even date herewith executed by Borrower (the "Amended Note") in the principal amount of \$1,200,000.00. As of the date hereof, the Amended Note shall be substituted for and replace in its entirety the existing Note as evidence of the amounts due and owing to Lender and the Note shall be canceled by Lender. All references in the Loan Documents to "Note" or words of similar import shall now mean the Amended Note. Notwithstanding any other provision in any Loan Document, the interest rate applicable to the Loan shall be as set forth in the Amended Note.

2. **Extend Maturity Date / Modification of the Loan Documents.** The Loan Documents (including but not limited to the Loan Agreement, the Guaranty, the Credit Agreement and the Security

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Agreement) are hereby amended to extend the "Maturity Date" of the Loan as described in any and all Loan Documents to January 22, 2010. All references in the Loan Documents to "Maturity Date" or words of similar import shall now mean January 22, 2010.

3. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that their Guaranty is in full force and effect following the execution and delivery of this Agreement and the Amended Note and that the Guarantor remain 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 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 or the Loan Documents as amended above nor obligate Lender to make any future modifications. Nothing in this Agreement shall constitute a satisfaction of the promissory note or other credit agreement secured by the Mortgage or the other Loan Documents. It is the intention of Lender to retain as liable all parties to the Mortgage and the other Loan Documents 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 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. **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 Prior Notes (as amended and modified including the Note), the Loan Agreement, the Mortgage, and the 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 Prior Notes (as amended and modified including the Note), the Loan Modifications, the Loan Agreement or the other Loan Documents and neither Borrower nor Guarantor knows 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 Prior Notes (as amended and modified including the Note), the Loan Agreement, this Agreement 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.

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(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 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, the Amended Note 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 Guarantors. This Agreement and the Amended Note have been duly executed and delivered on behalf of Borrower and Guarantors.

6. **Title Policy.** At Lender's request, Borrower shall, at its sole cost and expense, cause Greater Illinois Title Company to issue an endorsement to Lender's Title Policy, as of the date this Agreement is recorded, reflecting the recording of this Agreement, subject only to the Permitted Exceptions set forth in the Mortgage or any other encumbrances expressly agreed to by Lender.

7. **Expenses / Fee.** As conditions precedent to the agreements of Lender contained herein, Borrower shall pay to Lender (i) 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 and (ii) an extension fee in the amount of \$1,000.00.

8. **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 Borrower 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

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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) 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.

(i) Time is of the essence of each of Guarantor and Borrower's obligations under this Agreement.

9. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives, except to the extent of any contrary provision in this Agreement. Each party intends that this Agreement, in all respects, shall be deemed and construed to have been prepared mutually by all parties, and it is expressly agreed that any uncertainty and ambiguity existing herein shall not be construed more strictly against one party or the other against the other party. If any part or any provision of this Agreement shall be determined to be invalid under any applicable law or the regulation, the remaining part of this Agreement, that can be separated from the invalid, unenforceable provisions, shall be in full force and effect.

10. **No Novation.** This Agreement shall not be deemed or construed to be a satisfaction, reinstatement, novation, or release of the Loan or of any of the other Loan Documents, or, except as expressly provided herein, nor shall it be deemed a waiver by Lender of any of the rights of Lender under the prior Notes (or the Amended Note) or any of the other Loan Documents, or at law or in equity, and shall not be construed as a repayment or novation of the Prior Notes.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, and by different

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parties hereto in separate counterparts, each of which when so executed and delivered (whether by facsimile transmission or otherwise) shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

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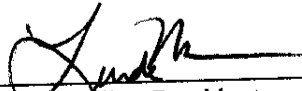
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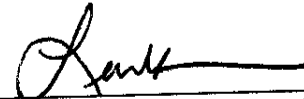
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement dated as of the day and year first above written.

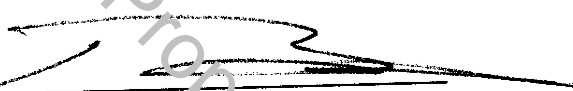
BORROWER:


GUARANTOR:

JOHNSON-MILLER & ASSOCIATES, LTD.,
an Illinois corporation

By: 
Linda Miller, President

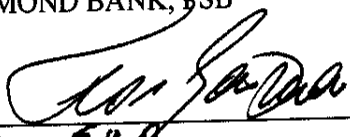

LINDA MILLER, Individually

By: 
Barry K. Johnson, Vice President


BARRY K. JOHNSON, Individually

LENDER:

DIAMOND BANK, FSB

By: 
Its: 300

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

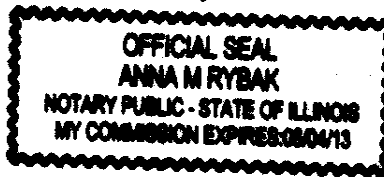
I, ANNA RYBAK, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that FLORICA GOCIMAN, SVP president of Diamond Bank, FSB, known to me to be the same person whose name is subscribed to the foregoing instrument as such SVP President, appeared before me this day in person 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 7 day of December, 2009.

Anna M. Rybak
Notary Public

My Commission Expires:

6-4-13



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

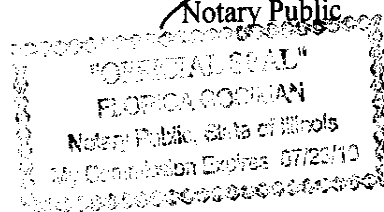
I, THE UNDERSIGNED, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Linda Miller, individually and as President and Barry K. Johnson, individually and as Vice President of JOHNSON-MILLER & ASSOCIATES, LTD., an Illinois corporation, personally know to me to be the 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 their own free and voluntary act, and as the free and voluntary act of JOHNSON-MILLER & ASSOCIATES, LTD., an Illinois corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 7th day of December, 2009.

The Undersigned
Notary Public

My Commission Expires:

07/23/2010



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EXHIBIT A

LEGAL DESCRIPTION

UNIT NUMBER 3 IN SEDGEWICK/FERN CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE: LOTS 14 AND 15 IN C.J.HULLS' SUBDIVISION OF BLOCK 51 OF CANAL TRUSTEE'S SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED JUNE 14, 2000, AS DOCUMENT 00438381, AND AS AMENDED FROM TIME TO TIME TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, IN COOK COUNTY, ILLINOIS.

PIN NO.: 14-33-324-035-1003

COMMONLY KNOWN AS: 1737 NORTH FERN COURT, CHICAGO, ILLINOIS 60614

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