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THIS DOCUMENT WAS PREPARED BY,
AND AFTER RECORDING, RETURN TO:

Scott L. David
MUCH SHELIST
191 North Wacker Drive
Suite 1800
Chicago, Illinois 60606.1615

PERMANENT TAX INDEX NUMBER:

17-17-201-003 0000

PROPERTY ADDRESS:

1151 W. Rundell Place
Chicago, Illinois 60607



Doc#: 1028039081 Fee: \$56.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/07/2010 03:46 PM Pg: 1 of 11

This space reserved for Recorder's use only.

MORTGAGE MODIFICATION AGREEMENT

This **MORTGAGE MODIFICATION AGREEMENT** (this "**Agreement**") is made as of the 1st day of August, 2010, by and among **FIRST CHICAGO BANK & TRUST, NOT PERSONALLY BUT SOLELY AS TRUSTEE UNDER A TRUST AGREEMENT DATED DECEMBER 10, 2007 AND KNOWN AS TRUST NO. 1202-B ("Trust No. 1202-B")** and **THE PETER MILLER TRUST DATED OCTOBER 25, 2004 (the "Miller Trust")** (each sometimes also referred to as a "**Borrower**", and collectively, the "**Borrowers**"), **PETER MILLER** (the "**Guarantor**") and **FIRST CHICAGO BANK & TRUST**, an Illinois banking corporation (the "**Lender**").

RECITALS:

A. On or about February 12, 2008, Lender made a loan to Borrowers (the "**Acquisition Loan**") as evidenced by that certain Promissory Note dated February 12, 2008 in the principal amount of **ONE MILLION ONE HUNDRED SEVENTY-TWO THOUSAND AND 00/100 DOLLARS (\$1,172,000.00)**, executed by the Miller Trust and made payable to the order of the Lender (the "**Acquisition Note**").

B. The Acquisition Note is secured by among other things, (i) that certain Mortgage dated February 12, 2008, executed by Borrowers to and for the benefit of Lender and recorded with the Recorder of Deeds in Cook County, Illinois (the "**Recorder's Office**") on March 4, 2008 as Document No. 0806455016 (the "**First Mortgage**") which First Mortgage encumbers the real property and all improvements thereon legally described on Exhibit "A" hereto (the "**Property**");

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(ii) that certain Assignment of Rents dated February 12, 2008 executed by Borrowers to and for the benefit of the Lender and recorded in the Recorder's Office on March 4, 2008, as Document No. 0806455017 (the "**First Assignment of Rents**"); and (iii) those certain other loan documents (the "**Acquisition Loan Documents**").

C. Pursuant to that certain Construction Loan Agreement (the "**Loan Agreement**") dated as of October 24, 2008, the Lender previously made a construction loan (the "**Construction Loan**") to the Borrowers in the aggregate original principal amount of **ONE MILLION EIGHT HUNDRED FOUR THOUSAND AND 00/100 DOLLARS** (\$1,804,000.00) as evidenced by a Promissory Note dated October 24, 2008 in the principal amount of the Construction Loan, executed by the Borrowers and made payable to the order of the Lender (the "**Construction Note**").

D. The Construction Note is secured by, among other things, (i) that certain Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing dated October 24, 2008, executed by the Borrowers to and for the benefit of the Lender recorded with the Recorder's Office on November 3, 2008, as Document No. 0831855042 (the "**Second Mortgage**"), which Mortgage encumbers the Property; (ii) that certain Assignment of Rents dated October 24, 2008 executed by the Borrowers to and for the benefit of the Lender and recorded in the Recorder's Office on November 5, 2008, as Document No. 0831855043 (the "**Second Assignment of Rents**"); and (iii) those certain other loan documents.

E. The Construction Loan is further secured by a separate Guaranty of Loan Agreement, Note, Mortgage, and Other Undertakings dated October 24, 2008 executed by Guarantor to and for the benefit of the Lender (the "**Guaranty**"); the Loan Agreement, the Construction Note, the Mortgage, the Assignment of Rents, the Guaranty and the other documents evidencing, securing and guarantying the Construction Loan, in their original form and as amended, are sometimes collectively referred to in this Agreement as the "**Construction Loan Documents**"; the Acquisition Loan Documents and the Construction Loan Documents are sometimes hereafter collectively referred to as the "**Loan Documents**").

F. The parties desire to amend the Loan Documents in order to restructure and consolidate the Acquisition Loan and Construction Loan (sometimes collectively referred to as the "**Loans**") and provide additional funds for the completion of certain construction and an interest reserve.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth above (which are incorporated into and made a part of this Agreement), (ii) the agreements by the Lender to modify the Loan Documents, as provided in this Agreement, (iii) the covenants and agreements contained in this Agreement, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged, the parties agree as follows:

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1. **Amended, Restated and Consolidated Promissory Note.** Concurrently with the execution of this Agreement, the Miller Trust will execute and deliver to Lender an Amended, Restated and Consolidated Promissory Note dated as of August 1, 2010, in the principal amount of **TWO MILLION EIGHT HUNDRED EIGHTY THOUSAND AND 00/100 DOLLARS** (\$2,880,000.00) (the "**Amended Note**"). The Amended Note is secured by the Acquisition Mortgage.
2. **Maturity Date.** The Amended Note has a maturity date of August 1, 2015. For purposes of the Loan Documents, references to the "**Maturity Date**" will now mean August 1, 2015. Accordingly, the Maturity Date of the Acquisition Mortgage is hereby changed to August 1, 2015.
3. **Maximum Lien.** The number of \$1,172,000.00 set forth on the first page of the First Mortgage shall be deleted and replaced with \$2,880,000.00.
4. **Representations and Warranties of the Borrowers.** The Borrowers represent, covenant and warrant to the Lender as follows:
 - (a) The representations and warranties in the Loan Agreement and the other Loan Documents are true and correct as of this date.
 - (b) There is currently no Event of Default (as defined in the Loan Agreement) under the Loan Agreement, the Acquisition Note, the Construction Note, the First or Second Mortgages or the other Loan Documents and the Borrowers do not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default thereunder.
 - (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 the Borrowers enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.
 - (d) There has been no material adverse change in the financial condition of the Borrowers, the Guarantor or any other party whose financial statement has been delivered to the Lender in connection with the Loan from the date of the most recent financial statement received by the Lender.
 - (e) As of this date, the Borrowers have no claims, counterclaims, defenses, or set-offs with respect to the Amended Note, the Acquisition Loan, Construction Loan or the Loan Documents as modified in this Agreement.
 - (f) Each Borrower has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified in this Agreement. The execution and delivery of this Agreement and the performance of the Loan Documents as modified in this Agreement have been duly authorized by all requisite action by or on behalf of each of the Borrowers. This Agreement has been duly executed and delivered on behalf of each of the Borrowers.

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5. **Title Policy.** As a condition precedent to the agreements contained in this Agreement, the Borrowers shall, at its sole cost and expense, cause Republic Title Company (the "**Title Insurance Company**"), to issue an endorsement to the Lender's title insurance policy No. RTC 71486 (the "**Title Policy**"), as of the date of this Agreement, reflecting the recording of this Agreement, insuring the first priority of the lien of the Acquisition Mortgage as a first mortgage on the Property in the amount of the Amended Restated and Consolidated Promissory Note and specifically insuring the Lender for claims and questions related to claims for mechanics' or materialmen's liens as of the date of this Agreement, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by the Lender.

6. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms his Guaranty and agrees that his Guaranty is currently in full force and effect concurrently with the execution and delivery of this Agreement, Guarantor will execute and deliver to Lender an Amended, Restated and Consolidated Guaranty which will guaranty the obligations of the Miller Trust under the Amended Note (the "**Amended Guaranty**"). The representations and warranty of Guarantor in his Amended Guaranty are, as of this date, true and correct and Guarantor knows of no default thereunder. The Amended Guaranty is the valid and binding obligation of the Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of the Lender thereunder, except as provided in such Amended Guaranty.

7. **Expenses.** As a condition precedent to the agreements contained in this Agreement, the Borrowers shall pay all out-of-pocket costs and expenses incurred by the Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

8. **Miscellaneous.**

(a) This Agreement is governed by and should be construed in accordance with the laws of the State of Illinois.

(b) This Agreement may not be construed more strictly against the Lender than against the Borrowers or the Guarantor merely by virtue of the fact that the same has been prepared by counsel for the Lender, it being recognized that the Borrowers, the Guarantor and the Lender have contributed substantially and materially to the preparation of this Agreement, and the Borrowers, the Guarantor and the Lender each acknowledges and waives 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 to be legally bound by the terms and provisions of this Agreement, of its own free will, without promises or threats or the exertion of duress upon it. The signatories 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.

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(c) Notwithstanding the execution of this Agreement by the Lender, nothing contained in this Agreement may be considered to constitute the Lender a venturer or partner of or in any way associated with the Borrowers or the Guarantor nor will privity of contract be presumed to have been established with any third party.

(d) The Borrowers, the Guarantor and the Lender each acknowledge 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 the Borrowers, the Guarantor and the Lender; and that all such prior understandings, agreements and representations are modified as set forth in this Agreement. Except as expressly modified, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement binds and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to any of the Loan Documents contained in any of the Loan Documents should be considered to refer to such Loan Document as amended. The paragraph and section headings used in this Agreement are for convenience only and shall not limit the substantive provisions hereof. All words in this Agreement that are expressed in the neuter gender should be considered to include the masculine, feminine and neuter genders. Any word in this Agreement that is expressed in the singular or plural should be considered, 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, constitute one original Agreement.

(h) Time is of the essence of the Borrowers' obligations under this Agreement.

(i) Lender hereby waives any right of set off against any of Borrowers' accounts held with Lender.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

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

THE BORROWERS:

PETER MILLER TRUST dated **October 25, 2004**

By: _____

Its: TRUSTEE

STATE OF ILLINOIS)

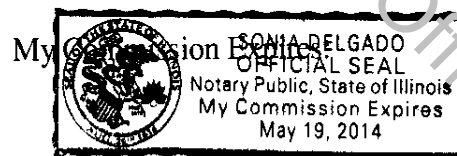
) SS.

COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, **DOES HEREBY CERTIFY** that **Peter Miller, the Co-Trustee of the Peter Miller Trust dated October 25, 2004**, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such manager, 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 Trust for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of September, 2010.

Notary Public

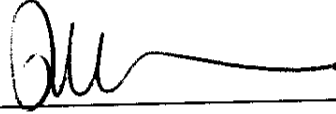


[Signatures Continue on Following Page]

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[Signatures Continued from Preceding Page]

THE GUARANTOR:



Name: Peter Miller

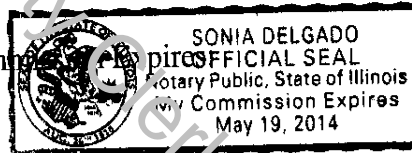
STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, **DOES HEREBY CERTIFY** that Peter Miller, 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 28th day of September, 2010.


Notary Public

My Comm



[Signatures Continue on Following Page]

UNOFFICIAL COPY*[Signatures Continued from Preceding Page]*

**FIRST CHICAGO BANK & TRUST, not
personally, but solely as Trustee under
Trust No. 1202-B**

By: *[Signature]*
Its: EXECUTIVE VICE PRESIDENT

**SEE EXCULPATORY CLAUSE
ATTACHED HERETO AND MADE A
PART HEREOF**

STATE OF ILLINOIS)

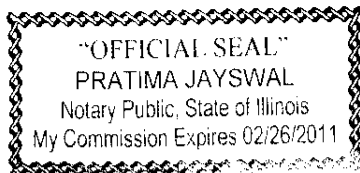
) SS.

COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid,
DOES HEREBY CERTIFY that Edward Kane ^{aka} EVP of **First Chicago Bank &
Trust, not personally, but solely as Trustee under Trust No. 1202-B**, who is personally
known to me to be the same person whose name is subscribed to the foregoing instrument as
such manager, 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 Trust for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 30th day of September, 2010.

[Signature]
Notary Public



My Commission Expires:

02/26/2011

[Signatures Continue on Following Page]

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[Signatures Continued from Preceding Page]

THE LENDER:

FIRST CHICAGO BANK & TRUST, an
Illinois banking corporation

By: Lauretta Burke
Name: LAURETTA BURKE
Title: Dr VP

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid,
DOES HEREBY CERTIFY that Lauretta Burke, the SR. V.P. of
FIRST CHICAGO BANK & TRUST, an Illinois banking corporation, who is personally
known to me to be the same person whose name is subscribed to the foregoing instrument as
such SR. V.P., 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 banking corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of September, 2010.

SONIA DELGADO
Notary Public

My Commission Expires SONIA DELGADO
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
May 19, 2014

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LOAN MODIFICATION AGREEMENT RIDER

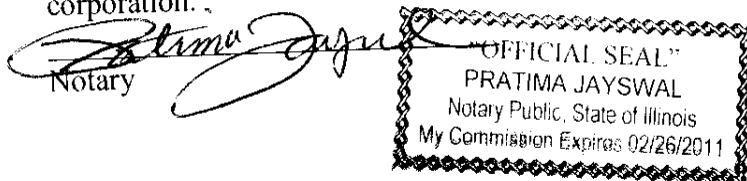
This Loan Modification Agreement is executed by First Chicago Bank & Trust, not personally but as Trustee as provided above in the exercise of the power and the authority conferred upon and vested in it as such Trustee (and First Chicago Bank & Trust hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed that with the exception of the foregoing warranty, notwithstanding anything to the contrary contained herein, that each and all of the warranties, indemnities, representations, covenants, undertakings, and agreements made in this Loan Modification Agreement on that part of First Chicago Bank & Trust Company, while in form purporting to be the warranties, indemnities, representations, covenants, undertakings, and agreements of First Chicago Bank & Trust, are nevertheless each and every one of them made and intended not as personal warranties, indemnities, representations, covenants, undertakings, and agreements by First Chicago Bank & Trust or for the purpose or with the intention of binding First Chicago Bank & Trust personally, and nothing in this Loan Modification Agreement or in the Note shall be construed as creating and liability of the part of First Chicago Bank & Trust personally to pay the Note or any interest that may accrue thereon, or any other Indebtedness under this Loan Modification Agreement, or to perform any covenant, undertaking, or agreement, either express or implied, contained in this Loan Modification Agreement, all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security under this Loan Modification Agreement, and that so far as First Chicago Bank & Trust and its successors personally are concerned, the legal holder or holders of the Note and the owner or owners of any Indebtedness shall look solely to the Property and to other assets of the Trust for the payment of the Note and Indebtedness, by the enforcement of the lien created by this Loan Modification Agreement in the manner provided in the Note and herein or by action to enforce the personal liability of any Guarantor.

First Chicago Bank & Trust as Successor Trustee to
Bloomington Bank and Trust, not personally but as
Trustee, u/t/a Dated 12/10/2007

By: Edward Karasek a/k/a Trust No: 1202-B
Edward Karasek 09/30/2010
Title: Executive Vice President Date

State of Illinois)
County of)

On this 30th day of September, 2010, before me, the undersigned Notary Public personally appeared Edward Karasek of First Chicago Bank & Trust and known to me to be an authorized agent of the corporation that executed the Mortgage and acknowledged the Mortgage to be free and voluntary act and deed of the corporation, by the authority of its bylaws or by resolution of its Board of Directors, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Mortgage and in fact executed the Mortgage on behalf of the corporation.



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EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

THE NORTH 1/2 OF LOT 31 IN HAYES SUBDIVISION OF BLOCK 2 IN THE CANAL TRUSTEE'S SUBDIVISION OF THE WEST 1/2 AND THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 39, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESSES:

1151 W. RUNDLELL PLACE
CHICAGO, IL 60607

PERMANENT TAX INDEX NUMBERS:

17-17-201-003-0000