



Doc#: 1031441055 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 11/10/2010 12:18 PM Pg: 1 of 10

This instrument prepared by,
and after recording, please
return to:

Joan T. Berg, Esq.
Harrison & Held, LLP
333 West Wacker Drive
Suite 1700
Chicago, Illinois 60606

Permanent Tax Index Numbers:

17-10-300-023-0000
17-10-300-024-0000

Property Address:

300-310 North Michigan Avenue
Chicago, Illinois 60601

Loan #112021506

REPUBLIC TITLE COMPANY
1941 ROHLWING ROAD
ROLLING MEADOWS, IL 60008

R110310.5

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of September 27, 2010, by and among RWW Group LLC, an Illinois limited liability company (the "Borrower"), Thomas DiPiazza and Richard Ferro (each, a "Guarantor" and collectively, the "Guarantors"), Chicago Title Land Trust Company, an Illinois corporation, not personally, but solely as Trustee under a Trust Agreement dated April 15, 2008 and known as Trust No. 8002350689 (the "Land Trustee") and First Chicago Bank and Trust Company, an Illinois banking corporation, its successors and assigns ("Lender").

RECITALS

A. Lender has heretofore made a loan (the "Loan") to Borrower in the principal amount of Twenty Three Million One Thousand One Hundred Thirteen and 93/100 Dollars (\$23,001,113.93), as evidenced by a Promissory Note dated May 1, 2008, as amended by that certain Modification of Loan Documents dated January 1, 2009 recorded with the Office of the Cook County Recorder as Document 1009611041 and that certain Modification of Loan Documents dated as of December 31, 2009 recorded with the Office of the Cook County Recorder as Document 1009611042 (collectively, the "Modification") in the principal amount of the Loan made payable by Borrower to the order of Lender (the "Note").

B. The Loan is secured by (i) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated May 1, 2008 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on May 15, 2008, as Document No. 0813633090 as modified by the Modification (the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto (the "Property"); (ii) that certain Assignment of Rents and Leases dated May 1, 2008 from Borrower to Lender and recorded in the Recorder's Office on May 15, 2008 as

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Document No. 0813633091 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated May 1 2008 from Borrower and Guarantor to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the 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 Loan is further secured by a Guaranty of Payment dated May 1, 2008 from Guarantors to Lender (the "Guaranty").

D. Borrower desires to amend the Loan Documents in order to extend the Maturity Date of the Note and to modify certain other provisions of the Loan Documents pursuant hereto.

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 to modify the Loan Documents, as provided herein (iii) the covenants and agreements contained herein; and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date**. The Maturity Date of the Note is extended to December 5, 2010. Any reference in the Note, the Mortgage or any other Loan Document to the Maturity Date shall mean December 5, 2010. Any and all other options to extend the Maturity Date are extinguished and of no force or effect.

2. **Representations and Warranties of Borrower**. Borrower hereby represents, covenants and warrants to Lender as follows:

a. Except for the non-payment of real estate taxes, the representations and warranties in the Mortgage and the other Loan Documents are true and correct as of the date hereof.

b. Except for the non-payment of real estate taxes and unpaid accrued interest on the Loan, there is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower does 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 under the Note, the Mortgage 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 enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

d. Except as disclosed to Lender, 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.

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- e. As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.
- f. Borrower validly exists under the laws of the State of its organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein.
- g. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower.
- h. This Agreement has been duly executed and delivered on behalf of Borrower.
- i. Borrower shall not raze, demolish or otherwise modify the Property without the prior written consent of the Lender.
- j. Borrower shall not enter into any contracts, incur any liabilities, modify or enter into or terminate any Leases (as defined in the Mortgage) without the prior written consent of the Lender, in Lender's sole discretion.

3. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's Title Insurance Policy No. 1401-008297072-D1 (the "**Title Policy**"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, 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 Lender.

4. **Reaffirmation of Guaranty.** Lender has released William E. Warman as a Guarantor of the Loan, and each Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of each Guarantor in the Guaranty are, as of the date hereof, true and correct and each Guarantor does not know of any default thereunder. The Guaranty, including but not limited to the reinstatement provisions at Section 7 of the Guaranty, continues to be the valid and binding obligation of Guarantors, enforceable in accordance with its terms and no one Guarantor or the Guarantors collectively has any claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

5. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay 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.

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6. **Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act.** Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Lender to identify Borrower in accordance with the Act. In addition, Borrower shall: (a) ensure that no person who owns a controlling interest in or otherwise controls Borrower or any subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders; (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto; and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

7. **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 any Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantors and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantors and 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 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 or any Guarantor nor shall privity of contract be presumed to have been established with any third party.

d. Borrower, Guarantors 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 representations are hereby modified as set forth in this

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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 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. Time is of the essence of each of Borrower's obligations under this Agreement.

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

LAND TRUSTEE: **ATTACHED EXONERATION RIDER IS INCORPORATED HEREIN**
BORROWER:

Chicago Title Land Trust Company, an Illinois corporation, not personally, by sole Trustee under a Trust Agreement dated April 15, 2008 and known as Trust



Name: KAREN MICHEL
Title: Assistant Vice President

GUARANTORS:

Thomas DiPiazza
Thomas DiPiazza

Richard Ferro
Richard Ferro

RWW Group LLC,
an Illinois limited liability company

By: Wacker Group 300, LLC
an Illinois limited liability company
Its: Manager

By: W4 Children's Trust
Its: Manager

By: William E. Varman
Name: William E. Varman
Title: Trustee

By: McShawnesy Group, LLC
an Illinois limited liability company
Its: Manager

By: Thomas DiPiazza
Name: Thomas DiPiazza
Title: Manager

By: Richard Ferro
Name: Richard Ferro
Title: Manager

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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 LAREN MICHEL, ASST VP, the Assistant Vice President of Chicago Title Land Trust Company, an Illinois corporation, as land trustee as aforesaid, 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 as such Assistant Vice President, 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 corporation, as land trustee aforesaid, for the uses and purposes therein set forth.

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

Grace Marin
 Notary Public

My Commission Expires: _____



It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the undersigned land trustee, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

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STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

W.E. Warman 9/16/10

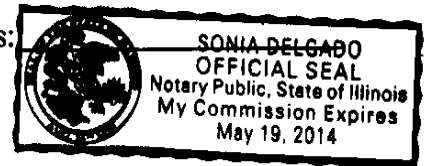
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that **William E. Warman**, ~~is~~ *indirectly* and as the Trustee of the W4 Children's Trust, being the Manager of Wacker Group 300, LLC, an Illinois limited liability company, being a Manager of RWW Group 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 personally and as such Trustee, 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 16th day of September, 2010.

Sonia Delgado

 Notary Public

My Commission Expires:

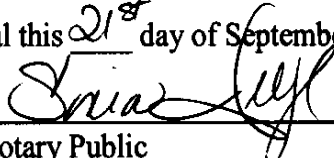


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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

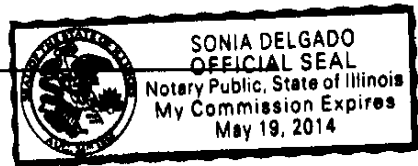
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that **Thomas DiPiazza** and **Richard Ferro**, each individually and each as a Manager of McShawnesy Group, LLC, an Illinois limited liability company, being a Manager of RWW Group LLC, an Illinois limited liability company, who is personally known to me to be the same persons whose names are subscribed to the foregoing instrument personally and as such Managers, 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 said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21st day of September, 2010.



Notary Public

My Commission Expires: _____



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LENDER:

First Chicago Bank and Trust Company,
an Illinois banking corporation

By: [Signature]
Name: Frank Vigilante
Title: Loan officer

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 Frank Vigilante, the Loan officer of **First Chicago Bank and Trust Company**, an Illinois corporation, 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 as such Loan officer, 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 corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21 day of September 2010.

[Signature]

Notary Public

My Commission Expires _____



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Exhibit A
The Property

Lots 32, 33, 34, 35 and 36 in Block 4 in Fort Dearborn Addition to Chicago in the Southwest Fractional Quarter of Section 10, Township 39 North, Range 14, East of the Third Principal Meridian in Cook County, Illinois.

Permanent Tax Index Numbers:

17-10-300-023-0000

17-10-300-024-0000

Commonly known as: 300-310 North Michigan Avenue, Chicago, Illinois 60601