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Prepared By:
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Mail to:
Diamond Bank, FSB
100 West North Avenue
Chicago, Illinois 60610



Doc#: 0820040191 Fee: \$48.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
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R071508-2041

FIRST MODIFICATION OF LOAN DOCUMENTS

THIS FIRST MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made effective as of the 27th day of June, 2008, by and among **825 N. WINCHESTER, LLC, an Illinois limited liability company**, having an address at 1070 S. Plymouth Court, Chicago, Illinois 60605 7916 ("Borrower") **DEAN FARLEY and JOHN ERRERA**, having an address at 1070 S. Plymouth Court, Chicago, Illinois 60605 7916 and **DIAMOND BANK, FSB**, its successors and assigns, having an address at 100 West North Avenue, Chicago, Illinois 60610 ("Lender").

REPUBLIC TITLE COMPANY
1941 ROHLWING ROAD
ROLLING MEADOWS, ILLINOIS 60008

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Four Hundred Thousand and 00/100ths Dollars U.S. (\$400,000.00), as evidenced by a certain Promissory Note dated June 20, 2007, in the original principal amount of Four Hundred Thousand and 00/100ths Dollars U.S. (\$400,000.00), made payable by Borrower to the order of Lender. The obligations of the Borrower under the Note were further guaranteed by a certain Guaranty from Dean Farley and John Errera in favor of Lender ("Guaranty").

B. The Note is secured by, among other things, that certain Mortgage and Security Agreement (the "Mortgage") dated June 20, 2007, from Borrower to Lender and recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder") on June 28, 2007 as Document No. 0717905213, which Mortgage encumbers the real estate legally described on Exhibit "A" attached hereto, and all improvements thereon (the "Property"), (ii) an Assignment of Rents and Leases dated June 20, 2007, from Borrower to Lender and recorded with the Recorder on June 28, 2007 as Document No. 0717905214, (iii) an Indemnification form Guarantor in favor of Lender. The Note, the Guaranty, the Mortgage, the Assignment of Rents, the Indemnity Agreement and any other document evidencing, securing and guaranteeing the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents".

C. Whereas, Borrower has requested that Lender extend the maturity date of the Loan from July 1, 2008 until October 1, 2008 and Lender is willing to so extend the maturity date of the Loan, subject to the terms and conditions more fully set forth hereinafter.

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) Borrowers agreement to pay all of Lender's reasonable attorneys fees and recording costs in connection with this Agreement, (iv) the covenants and agreements

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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 Promissory Note.** The Promissory Note dated June 20, 2007 shall be amended and restated by that certain Promissory Note of even date herewith executed by Borrower (the "Amended Note"). As of the date hereof, the Amended Note shall be substituted for and replace in its entirety the Promissory Note dated December 1, 2007, as evidence of the amounts due and owing to Lender and the manner of repayment of same, and the existing Note shall be canceled by Lender.

2. **Continuing Validity.** Except as expressly modified above, the terms of the original Mortgage, the Additional Mortgage and the other Loan Documents, as previously amended, 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 other 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. It is the intention of Lender to retain as liable all parties to the Mortgage 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 original 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.

3. **Loan Maturity Date.** The Maturity Date of the Loan, described in the Amended Note or any of the other Loan Documents, shall be October 1, 2008.

4. **Borrower Representations and Stipulations.** Borrower acknowledges, represents and warrants as follows:

- (a) The Prior Notes (as amended) and all other Loan Documents constitute valid and legally binding obligations of Borrower and are enforceable to their full extent against Borrower and the collateral granted therein in accordance with the terms thereof without defense, affirmative defense or counterclaim of any kind.
- (b) Borrower does hereby waive and release any and all claims and defenses, whether legal or equitable, or by way of offset, recoupment or counterclaim that the Borrower hereto has, or may have against Lender, relating in any way to Prior Notes, the Loan Agreement, the Mortgage, or any other documents securing or relating to the Loan, by reason of any matter, cause or thing whatsoever occurring, including breach of good faith and fair dealing by Lender.
- (c) The party or parties who execute this Agreement on behalf of the Borrower have the authority to do so and that the same is the legally binding act of the Borrower and each of them.
- (d) There exists no defenses, whether at law or equity to the repayment of the Prior Notes, or any of Borrower's obligations under any of the other Loan Documents.

5. **Borrowers' Releases.** Borrower and each of them, in consideration of the execution of this Agreement, and the performance of all terms contained herein to be performed by Lender, and other good

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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 Forbearance Agreement, the Notes, the Mortgages or this Agreement.

6. **Waiver.** Nothing in this Agreement shall be construed as a waiver of or acquiescence to any Existing Defaults or any future Events of Default (as defined in the Loan Documents), which shall continue in existence subject only to Lender's agreement, as set forth herein, not to enforce its remedies for a limited period of time. Except as expressly provided herein, the execution and delivery of this Agreement shall not: (a) constitute an extension, modification, or waiver of any other aspect of the Prior Notes (as amended and restated) or the Loan Documents; (b) extend the terms of the Prior Notes or the Loan Documents or the due date of any of the Prior Notes, except as set forth in the Amended Note; (c) give rise to any obligation on the part of Lender to extend, modify or waive any term or condition of the Loan Documents; or (d) give rise to any defenses or counterclaims to Lender's right to compel payment of the Loan or to otherwise enforce its rights and remedies under the Amended Note, and any other Loan Documents. Except as expressly limited herein, Lender hereby expressly reserves all of its rights and remedies under the Prior Notes, as amended, and the Loan Documents and under applicable law with respect to such defaults.

7. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket recording 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.

8. **Title Insurance.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket recording 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. At Lender's request Borrower, shall at its sole cost, cause the applicable Title Company to issue an endorsement to Lender's title policy, as of the date of this Agreement is recorded, reflecting such recording, subject only to Permitted exceptions set forth in the Mortgage or other encumbrances expressly agreed to in writing by Lender.

9. **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 merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower 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

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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) Borrower 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 and Lender; and that all such prior understandings, agreements and 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. Borrower 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 and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement.
- (d) 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.
- (e) Borrower shall mean all of the undersigned and as used herein, Borrower shall be deemed, whenever appropriate in the context, to include the singular and plural. If this Agreement is executed by more than one party as Borrower, the liability of such parties shall be joint and several.
- (f) Each party to this Agreement agrees to perform any further acts and execute any documents that may be reasonably necessary to effect the purposes of this Agreement.
- (g) Time is of the essence of Borrower's obligations under this Agreement.

10. **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.

11. **No Novation.** This Agreement shall not be deemed or construed to be a satisfaction, reinstatement, novation, or release of the Prior Notes 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 Notes 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 amended and replaced by the Amended Note.

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

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

LENDER:

BORROWER:

DIAMOND BANK, FSB

825 N. WINCHESTER, LLC , an Illinois limited liability company

By: [Signature]
Its: Samantha Lina President

By: [Signature]
Dean Farley, Managing Member

By: [Signature]
John Errera, Managing Member

GUARANTOR:

[Signature]
Dean Farley, individually

By: [Signature]
John Errera, individually

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EXHIBIT A

LEGAL DESCRIPTION

THE SOUTH 25 FEET OF THE NORTH 50 FEET OF SUB LOT 7 IN THE SUPERIOR COURT PARTITION OF BLOCK 7 IN COCHRAN AND OTHERS' SUBDIVISION OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

P.I.N. 17-06-434-013-0000

COMMONLY KNOWN AS: 825 N. WINCHESTER AVENUE, CHICAGO, IL 60622

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