

# UNOFFICIAL COPY



Doc#: 0906234059 Fee: \$50.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/03/2009 11:04 AM Pg: 1 of 8

THIS DOCUMENT PREPARED BY:

Crowley & Lamb, P.C.  
350 North LaSalle Street Suite 900  
Chicago, Illinois 60654

AFTER RECORDING RETURN TO:

Diamond Bank, FSB  
100 West North Avenue  
Chicago, Illinois 60610  
Attn: Vice President

This space reserved for Recorder's use only

## FIFTH MODIFICATION OF LOAN DOCUMENTS

**THIS FIFTH MODIFICATION OF LOAN DOCUMENTS** (this "Agreement") is made effective as of the 1<sup>st</sup> day of August, 2008, by and among **E 55, L.L.C.**, an Illinois limited liability company ("Borrower") and **KEVIN JACKSON**, "Guarantor"), each having an address at 3023 N. Clark Street, Suite 325, Chicago, Illinois 60657 and **DIAMOND BANK, FSB**, its successors and assigns, having an address at 100 West North Avenue, Chicago, Illinois 60610 ("Lender").

### RECITALS:

A. Lender has heretofore made a construction loan (the "Loan") to Borrower in the principal amount of One Million Nine Hundred Ninety Four Thousand Five Hundred and 00/100ths Dollars U.S. (\$1,994,500.00), as evidenced by a Promissory Note dated September 29, 2005, in the principal amount of the Loan made payable by Borrower to the order of Lender (as amended, amended and restated or replaced, "Note") and a certain Construction Loan and Security Agreement ("Loan Agreement") dated September, 2005 from Borrower in favor of the Lender.

B. The Note is secured by, among other things, (i) that certain Mortgage and Security Agreement dated September 29, 2005, from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on October 5, 2005, as Document No. 0527835036 (the "Mortgage"), which Mortgage encumbers the real property and all, improvements thereon legally described on Exhibit A hereto ("Property"), and (ii) that certain Assignment of Rents and Leases dated September 29, 2005, from Borrower to Lender and recorded with the Recorder's Office on October 5, 2005, as Document No. 0527835037 (the "Assignment of Leases"), (iii) that certain Security Agreement Chattel Mortgage dated September 29, 2005, from Borrower to Lender and recorded with the Recorder's Office on October 5, 2005, as Document No. 0527835038 (the "Chattel Mortgage") (iv) the personal Guaranty and separate Completion Guaranty of Kevin Jackson (collectively the "Guaranty"), guaranteeing payment

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and performance of all obligations of Borrower under the Note and Loan Documents (as hereinafter defined), and (iv) certain other loan documents (the Note, the Mortgage, the Loan Agreement, the Chattel Mortgage, the Guaranty, the Assignment of Leases and any other document evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. Whereas on or about October 1, 2006, Borrower, Guarantor and Lender entered into a First Modification of Loan Documents, Recorded with the Recorder of Deeds of Cook County, Illinois, as Document No. 070518006 whereby the maturity date defined in the Note, the Loan Agreement and the other Loan Documents, was amended and extended from October 1, 2006 to April 1, 2007.

D. Whereas on or about April 1, 2007, Borrower, Guarantor and Lender entered into a Second Modification of Loan Documents, Recorded with the Recorder of Deeds of Cook County, Illinois, as Document No. 0715231041 whereby the maturity date defined in the Note, the Loan Agreement and the other Loan Documents, was amended and extended from April 1, 2007 to February 1, 2008.

E. Whereas on or about February 1, 2008, Borrower, Guarantor and Lender entered into a Third Modification of Loan Documents, Recorded with the Recorder of Deeds of Cook County, Illinois, as Document No. 0812018053 whereby the maturity date defined in the Note, the Loan Agreement and the other Loan Documents, was amended and extended from February 1, 2008 to May 1, 2008.

F. Whereas on or about May 1, 2008, Borrower, Guarantor and Lender entered into a Fourth Modification of Loan Documents, Recorded with the Recorder of Deeds of Cook County, Illinois, as Document No. 0819011186 whereby the maturity date defined in the Note, the Loan Agreement and the other Loan Documents, was amended and extended from May 1, 2008 to August 1, 2008.

G. Borrower now desires to amend the Loan Documents in order to induce Lender to advance to modify and extend the maturity date of the Loan from August 1, 2008 through and including January 1, 2009 and Lender is willing to advance to modify and extend the maturity date of the Loan from August 1, 2008 through and including January 1, 2009, on 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) Borrower's agreement to all of Lender's reasonable attorneys fees and costs in connection with this Modification, (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. **Maturity Date.** The Loan Maturity Date is extended from August 1, 2008 through and including January 1, 2009. Any reference in the Note (as amended and restated) or any other Loan Document to the Loan Maturity Date shall mean January 1, 2009.

2. **Amendment of Note.** The Note shall be amended and restated by that certain Third Amended and Restated Promissory Note of even date herewith executed by Borrower in favor of Lender (the "Amended Note").

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As of the date hereof, the Amended Note shall be substituted for and replace in its entirety the existing Note (as amended) as evidence of the amounts due and owing to Lender.

3. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that each of their Guaranty's are 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 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 any other Loan Document 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 other Loan Documents. It is the intention of Lender to retain as liable all parties to the Mortgage and all parties, makers and endorser 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 Mortgages 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. **Construction Mortgage.** The Mortgages constitute a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of Illinois.
6. **Construction Loan.** If some or all of the proceeds of the Loan creating the Indebtedness are to be used to construct or complete construction of any Improvements on the Property, the Improvements shall be completed no later than the maturity date of the Amended Note (or such earlier date as Lender may reasonably establish) and Borrower shall pay in full all costs and expenses in connection with the work. Lender will disburse loan proceeds under such terms and conditions as Lender may deem reasonably necessary to insure that the interest created by the Mortgages shall have priority over all possible liens, including those of material suppliers and workmen. Lender may require, among other things, that disbursement requests be supported by receipted bill, expense affidavits, waivers of liens, construction progress reports, and such other documentation as Lender may reasonably request.
7. **Borrower and Guarantor Representations and Stipulations.** Borrower and Guarantor acknowledge, represent and warrant as follows:
  - (a) The Amended Note and all other Loan Documents constitute valid and legally binding obligations of Borrower and/or Guarantor and are enforceable to their full extent against Borrower and/or Guarantor and the collateral granted therein in accordance with the terms thereof without defense, affirmative defense or counterclaim of any kind.

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- (b) Borrower and Guarantor do 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 and/or Guarantor hereto have, or may have against Lender, relating in any way to Note, 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 and/or Guarantor 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 Amended Note, or any of Borrower and/or Guarantor's obligations under any of the other Loan Documents.

8. **Borrower and Guarantor's Releases.** 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.

9. **Waiver.** Nothing in this Agreement shall be construed as a waiver of or acquiescence to any other 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 Amended Note or the Loan Documents; (b) extend the terms of the Note or the Loan Documents or the due date of any of the 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 Note, as amended and the Loan Documents and under applicable law with respect to such defaults.

10. **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.

## 11. **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 and/or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being

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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) 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 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.

(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 and/or Guarantor's obligations under this Agreement.

11. **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.

12. **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 Note (or the Amended Note) or any

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of the other Loan Documents, or at law or in equity, and shall not be construed as a repayment or novation of the Prior Note.

13. **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.

**BORROWER:**

E 55, L.L.C., an Illinois limited liability company

By: \_\_\_\_\_

Kevin Jackson, Manager

**GUARANTOR:**

Kevin Jackson, Individually

**LENDER:**

DIAMOND BANK, FSB

By: \_\_\_\_\_

Its: \_\_\_\_\_

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

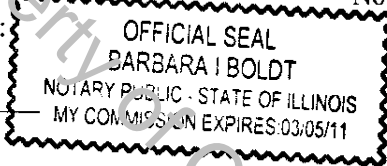
I, Barbara I. Boldt, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Matt Gambis, president of Diamond Bank, FSB, known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged 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 1 day of August, 2008.

Barbara I. Boldt  
Notary Public

My Commission Expires:

03/05/11

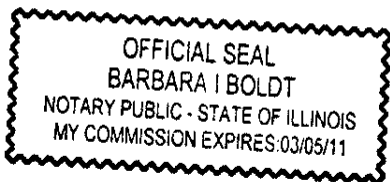


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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Barbara I. Boldt, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Kevin Jackson, individually and as the Manager of E 55, L.L.C., an Illinois limited liability company, 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 E 55, L.L.C., an Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 1 day of August, 2008.



Barbara I. Boldt  
Notary Public

My Commission Expires

03/05/11

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EXHIBIT A

LEGAL DESCRIPTION

LOTS 8, 9 AND 10 TAKEN AS A TRACT (EXCEPT THE NORTH 38 FEET THEREOF) IN W.J. HAERTHER'S NORTH SHORE ADDITION IN PINE GROVE, A SUBDIVISION OF FRACTIONAL SECTION 21, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, MAP OF WHICH ADDITION WAS RECORDED SEPTEMBER 22, 1892 IN BOOK 56 OF PLATS, PAGE 32, IN COOK COUNTY, ILLINOIS.

PIN NO.: 14-21-308-006-0000

COMMONLY KNOWN AS: 3335-3337 NORTH HALSTED, CHICAGO, ILLINOIS

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