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THIS DOCUMENT PREPARED BY:

Crowley & Lamb, P.C.
350 North LaSalle Street
Suite 900
Chicago, Illinois 60610



Doc#: 0909331115 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/03/2009 12:48 PM Pg: 1 of 9

AFTER RECORDING RETURN TO:

Diamond Bank, FSB
1051 Perimeter Drive
Schaumburg, IL 60173
Attn: Senior Vice President

This space reserved for Recorder's use only

THIRD MODIFICATION OF LOAN DOCUMENTS

THIS THIRD MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made effective as of the 1st day of March, 2009, by and among **EVERGREEN VENTURES LLC, an Illinois limited liability company**, having an address at 687 North Milwaukee, Chicago, Illinois 60622 ("Borrower"), and **ERIK SACHS and MARK MASINO** having an address at 687 North Milwaukee, Chicago, Illinois 60622 (collectively "Guarantor") and **DIAMOND BANK, FSB**, its successors and assigns, having an address as set forth above ("Lender").

RECITALS:

A. Lender has heretofore made a construction loan (the "Loan") to Borrower in the principal amount of EIGHT HUNDRED FORTY THOUSAND AND 00/100^{THS} DOLLARS U.S. (\$840,000.00), as evidenced by a Promissory Note dated February 23, 2007, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Original Note"), which Original Note was replaced by that certain Promissory Note dated July 16, 2007 in the principal amount of \$880,000.00, and a certain Construction Loan and Security Agreement ("Loan Agreement") dated February 23, 2007 from Borrower in favor of the Lender. The Original Note was further replaced by that certain Amended and Restated Promissory Note ("Note") dated March 1, 2008 in the principal amount of \$583,000.00 made payable by Borrower to the order of Lender under the terms of that certain Second Modification of Loan Documents dated March 1, 2008 among the parties hereto.

B. The Note is secured by, among other things, (i) that certain Mortgage dated February 23, 2007, from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") as Document No. 0705749096 (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 February 23, 2007, from Borrower to Lender and recorded with the Recorder's Office as Document No. 0705749097 (the "Assignment of Leases"), (iii) the personal Guaranty of Payment and Completion (the "Guaranty") of Erik Sachs and Mark Masino guaranteeing payment and performance of all obligations of Borrower under the Note and Loan Documents (as hereinafter defined), (iv) a Collateral Assignment of Loan Document dated March 1, 2008 ("Collateral Assignment") and (v) certain other loan documents (the Note, the Mortgage, the Loan Agreement, the Guaranty, the Assignment of Leases, the Collateral Assignment and any other document evidencing, securing and guarantying the Loan,

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in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents"). The Loan Documents were also modified by that certain Modification of Loan Documents dated July 16, 2007.

C. Whereas, the Borrower has requested that Lender extend the Maturity Date of the Loan from March 1, 2009 to March 1, 2010 and Lender agrees to such extension on the terms contained herein.

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 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. **Maturity Date; Amendment of the Note.**

(a) The Loan Maturity Date is extended from March 1, 2009 through and including March 1, 2010. Any reference in the Note (as amended and restated) or any other Loan Document to the Loan Maturity Date shall mean March 1, 2010.

(b) The Note shall be amended and restated by that certain Amended and Restated Promissory Note of even date herewith in the original principal amount of FIVE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED AND 00/100THS DOLLARS U.S. (\$580,800.00) executed by Borrower in favor of Lender (the "Amended Note"). As of the date hereof, the Amended Note restates and replaces the Note and is not a repayment or novation of the Note. Notwithstanding any other provision in the Loan Documents, the interest rate applicable to the Loan shall be as set forth in the Amended Note.

2. **Amendment of the Mortgage and Assignment of Rents.** The Mortgage and the Assignment of Rents are hereby modified as follows:

(a) The second "Whereas" paragraph on page 1 of the Mortgage shall be deleted in its entirety and the following substituted in its place:

"WHEREAS, Mortgagee has extended credit to Mortgagor in the amount of FIVE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED AND 00/100THS DOLLARS U.S. (\$580,800.00) (the "Loan") and, to evidence the Loan Mortgagor has executed and delivered to Mortgagee an certain Amended and Restated Promissory Note (the "Note") in the original principal amount of FIVE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED AND 00/100THS DOLLARS U.S. (\$580,800.00) and to evidence Mortgagor's obligations and duties in connection with the Loan, Mortgagor has executed and delivered to Mortgagee a certain Construction Loan and Security Agreement between Mortgagor and Mortgagee (the "Loan Agreement");

(b) Wherever in the Mortgage the word "Note" is used, it shall mean the Amended Note described herein in the original principal amount of FIVE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED AND 00/100THS DOLLARS U.S. (\$580,800.00).

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(c) Wherever in the Assignment of Rents the word "Note" is used, it shall mean the Amended Note described herein in the original principal amount of FIVE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED AND 00/100THS DOLLARS U.S. (\$580,800.00).

3. **Amendment to Loan Agreement and the other Loan Documents:** Wherever in the Loan Agreement and the other Loan Documents the word "Note" is used, it shall mean the Amended Note described herein in the original principal amount of FIVE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED AND 00/100THS DOLLARS U.S. (\$580,800.00) and any reference to the principal amount of the Loan in the Loan Documents shall now mean FIVE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED AND 00/100THS DOLLARS U.S. (\$580,800.00).

4. **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 (including the amounts evidenced by the Additional Advance). 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.

5. **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, the Amended Note 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 (including the Amended Note). 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.

6. **Construction Mortgage.** The Mortgage constitutes 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.

7. **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 Mortgage shall have priority over all possible liens, including those of material suppliers and workmen. Lender may require, among other things, that

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disbursement requests be supported by receipted bill, expense affidavits, waivers of liens, construction progress reports, and such other documentation as Lender may reasonably request.

8. **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.
- (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 the Amended 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.

9. **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.

10. **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 Amended 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.

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Except as expressly limited herein, Lender hereby expressly reserves all of its rights and remedies under the Amended Note and the Loan Documents and under applicable law with respect to such defaults.

11. **Conditions Precedent.** As conditions precedent to the agreements contained herein, Borrower shall (i) 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 and (ii) pay Lender a \$500.00 extension fee.

12. **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 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.

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(g) Time is of the essence of Borrower and/or Guarantor's obligations under this Agreement.

13. **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.

14. **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 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.

15. **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.

[signature page attached]

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

BORROWER:

EVERGREEN VENTURES LLC,
an Illinois limited liability company

By: RpV Group LLC, an Illinois limited liability
company, its manager

By: Real Property Ventures, Inc., an Illinois
corporation, its manager

By: Erik Sachs as CEO
Erik Sachs, its Chief Executive Officer

By: Mark Masino
Mark Masino, its Chief Operating Officer

GUARANTOR:

Erik Sachs
Erik Sachs, individually

Mark Masino
Mark Masino, individually

LENDER:

DIAMOND BANK, FSB

By: [Signature]
Its: AVP

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EXHIBIT A

LEGAL DESCRIPTION

LOT 39 IN BLOCK 1 IN HUMBOLDT PARK RESIDENCE ASSOCIATION SUBDIVISION OF THE
SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 39 NORTH, RANGE 13,
EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

P.I.N. 16-01-217-035

PROPERTY: 622 W. EVERGREEN AVENUE, CHICAGO, ILLINOIS 60622

Property of Cook County Clerk's Office