

# UNOFFICIAL COPY



Doc#: 0927545113 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/02/2009 03:53 PM Pg: 1 of 11

THIS DOCUMENT PREPARED BY:

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

AFTER RECORDING RETURN TO:

Diamond Bank, FSB  
1051 Perimeter Drive, Schaumburg,  
Illinois 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 August, 2009, by and among **932 NOBLE LLC**, an Illinois limited liability company ("Borrower"), having an address of 1415 W. Walton, Chicago, Illinois 60622, **DAVID EISENBERG** ("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 NINE HUNDRED THIRTY THOUSAND FOUR HUNDRED AND 00/100THS DOLLARS U.S. (\$930,000.00), as evidenced by a Promissory Note dated April 17, 2007, in the principal amount of the Loan made payable by Borrower to the order of Lender (the "Original Note") and a certain Construction Loan and Security Agreement ("Loan Agreement") dated April 17, 2007 between Borrower and the Lender. Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Loan Agreement. The Original Note was replaced by that certain Amended and Restated Promissory Note dated March 28, 2008 (as amended, the "Second Note") in the principal amount of \$1,360,000 made payable by Borrower to the order of Lender under the terms of a Modification of Loan Documents ("Modification") dated March 28, 2008. The Second Note was amended under the terms of two Change in Terms Agreements dated June 30, 2008 and October 31, 2008, respectively pursuant to which, among other things, the maturity date of the Note was extended until April 30, 2009. The Second Note was replaced by that certain Second Amended and Restated Promissory Note dated April 30, 2009 (the "Note") in the principal amount of \$1,360,000 made payable by Borrower to the order of Lender under the terms of a Second Modification of Loan Documents ("Second Modification") dated April 30, 2009.

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B. The Note is secured by, among other things, (i) that certain Mortgage dated April 17, 2007, from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on June 4, 2007 as Document No. 0715557136 (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 April 17, 2007, from Borrower to Lender and recorded with the Recorder's Office on June 4, 2007 as Document No. 0715557137 (the "Assignment of Leases"), (iii) the personal Guaranty of Payment and Completion (the "Guaranty") of Guarantor, guaranteeing payment and performance of all obligations of Borrower under the Note and the other Loan Documents (as hereinafter defined), (iv) that certain Junior Mortgage ("Junior Mortgage") dated as of April 17, 2007 from David and Joyce Eisenberg to Lender recorded in the Recorder's Office on June 4, 2007 as Document No. 0715557138, which Junior Mortgage encumbers the real property and improvements thereon legally described on Exhibit B hereto and that certain Junior Mortgage ("Second Junior Mortgage") dated as of March 28, 2008 from Joyce Eisenberg to Lender recorded in the Recorder's Office on May 20, 2008 as Document No. 0814149057, which Second Junior Mortgage encumbers the real property and improvements thereon legally described on Exhibit C hereto and (v) certain other loan documents (the Note, the Mortgage, the Loan Agreement, Modification, Second Modification, the Guaranty, the Assignment of Leases, the Junior Mortgage, Second Junior Mortgage, and any other document evidencing, securing and guarantying the Loan, in their original form and as amended from time to time, are sometimes collectively referred to herein as the "Loan Documents").

C. The Borrower and Guarantor have requested that Lender modify the interest rate and payment schedule on the Loan and Lender is willing to do so on the terms and conditions more fully set forth hereinafter and the Amended Note (defined below).

## 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 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. Reaffirm Maturity Date / Modification of Interest Rate / Fees.

(a) Lender and Borrower agree that the Maturity Date for the Loan was amended and extended from April 30, 2009 until May 1, 2013. All references in any and all Loan Documents to "Maturity Date" or words of similar import shall mean May 1, 2013.

(b) Lender and Borrower agree that the rate of interest for the Loan is hereby amended retrospectively to equal Prime plus .75% per annum for the period from October 31, 2008 until July 31, 2009. "Prime" shall mean the highest "Prime" lending rate as published from time to time in the Money Rates Section of the *Wall Street Journal* changing when and as such prime lending rate changes.

(c) In addition to all other sums due or to become due to Lender under the Loan Documents, Borrower agrees to pay to the Lender on the Maturity Date, or earlier upon acceleration of the Maturity Date or upon payment in full of the Loan, the amount of \$6,230.50, which represents fees and costs charged or incurred by the Lender in connection with this Loan.

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

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in the principal amount of \$1,360,000.00. As of the date hereof, the Amended Note restates and replaces the Note and is not a repayment or novation of the Note. All references in any and all Loan Documents to "Note" shall now mean the Amended Note. Notwithstanding any other provision contained in the Loan Documents, the prospective interest rate and payments applicable to the Loan shall be as set forth in the Amended Note.

3. **Reaffirmation of Guaranty.** 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 and the Amended Note and that the Guarantor remains 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. **Representations and Warranties of Borrower and Guarantor.** Borrower, Joyce Eisenberg and Guarantor hereby represent, covenant and warrant to Lender as follows:

- (a) The representations and warranties in the Amended Note, the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.
- (b) There is currently no Event of Default (as defined in the Loan Documents) under the Amended Note, the Mortgage or the other Loan Documents and none of the Borrower, Joyce Eisenberg or Guarantor 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 Amended 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, Joyce Eisenberg and Guarantor, as applicable, 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 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.
- (e) As of the date hereof, neither of the Borrower, Joyce Eisenberg nor Guarantor have any claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.
- (f) 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, Joyce Eisenberg and Guarantor. This Agreement has been duly executed and delivered on behalf of Borrower, Joyce Eisenberg and Guarantor.

5. **Title Policy and Construction Escrow.** If Lender so requests, Borrower shall, at its sole cost and expense, cause Freedom Title Company ("Title Company") to issue to Lender's a title insurance policy (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and the Eisenberg Mortgage and insuring the first priority of the lien of the Mortgage and second priority lien of the Junior Mortgage and Second Junior Mortgage, subject only to the exceptions and encumbrances expressly agreed to by Lender and otherwise acceptable to Lender.

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6. **Expenses.** As conditions 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.

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

(d) Borrower, Guarantor, Joyce Eisenberg 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.

(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", the "Junior Mortgage", "Second Junior Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Amended Note, the Mortgage, the Junior Mortgage, Second Junior 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) Borrower, Joyce Eisenberg Guarantor 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 and valuable consideration, the receipt and adequacy of which is hereby acknowledged,

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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 other Loan Documents or this Agreement.

(h) Time is of the essence of Guarantor's, Joyce Eisenberg's and Borrower's obligations under this Agreement.

**[SIGNATURE PAGE ATTACHED]**

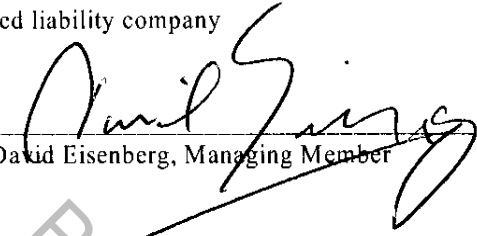
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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement dated as of the day and year first above written.

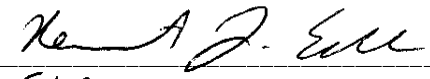
**BORROWER:**

932 NOBLE LLC, an Illinois limited liability company

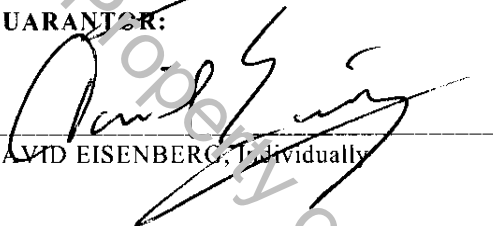
By:   
David Eisenberg, Managing Member

**LENDER:**

DIAMOND BANK, FSB

By:   
Its: EVP

**GUARANTOR:**

  
DAVID EISENBERG, Individually

Agreed:

  
JOYCE EISENBERG

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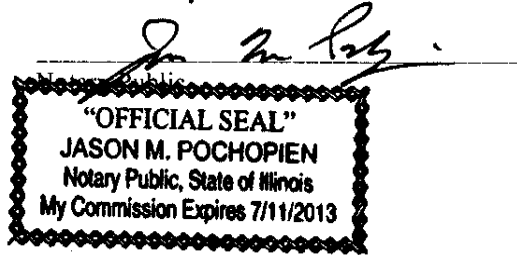
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Jason M. Pochopien, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Ken EJI, EV president of Diamond Bank, FSB, known to me to be the same person whose name is subscribed to the foregoing instrument as such EV 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 29<sup>th</sup> day of Sept., 2009.

My Commission Expires:

7/11/13



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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF IL )

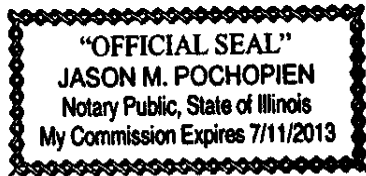
I, Jason M. Pochopien, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that David Eisenberg, individually and as managing member of 932 NOBLE LLC, an Illinois limited liability company and known to me to be the same person whose name is subscribed to the foregoing instrument 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 932 NOBLE LLC, an Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2009.

My Commission Expires:

7/11/13

Jason M. Pochopien  
Notary Public



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STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF IL            )

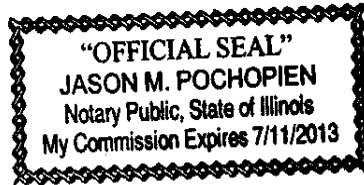
I, Jason M. Pochapien, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Joyce Eisenberg, individually, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29<sup>th</sup> day of Sept., 2009.

Jason M. Pochapien  
Notary Public

My Commission Expires:

7/11/13



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EXHIBIT A

LEGAL DESCRIPTION

LOT 11 IN SUBDIVISION OF THE NORTHEAST 1/4 OF BLOCK 22 IN CANAL TRUSTEE'S SUBDIVISION OF PART OF THE WEST 1/2 OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. 17-05-315-049

COMMONLY KNOWN AS: 932 N. NOBLE STREET, CHICAGO, ILLINOIS 60622

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## EXHIBIT B

### LEGAL DESCRIPTION

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LOT 7 IN THE SUBDIVISION BY ALLEN C. LEWIS OF THE SOUTH 1/2 OF BLOCK 22 IN CANAL TRUSTEES' SUBDIVISION IN THE WEST 1/2 OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

P.I.N. 17-05-319-049

COMMONLY KNOWN AS: 1415 WEST WALTON, CHICAGO, ILLINOIS 60622

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## EXHIBIT C

### Legal Description

LOT 110 (EXCEPT THE NORTH 5 FEET THEREOF) ALL OF LOT 109 AND THE NORTH 5 FEET OF LOT 108 IN EUGENE L. SWENSONS EVANSTON MANOR, BEING A SUBDIVISION IN THE NORTH 1/2 OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

P.I.N. 10-14-223-019

COMMONLY KNOWN AS: 9245 Forest View, Evanston, IL

Property of Cook County Clerk's Office