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This Document Prepared by
and After Recording Return to:
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21930-0001

Doc#: 0931444068 Fee: \$62.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 11/10/2009 03:25 PM Pg: 1 of 14

CRYSTAL LAKE BANK &
TRUST COMPANY, N.A.
70 N. Williams
Crystal Lake, IL 60014

Ninth Amendment to Promissory Note, Mortgage, and Assignment of Rents

This Ninth Amendment to Promissory Note, Mortgage, and Assignment of Rents ("**Amendment**") is made by the parties on the dates set forth below their executions but effective as of September 1, 2009 (the "**Effective Date**"), by and between **SMITHFIELD PROPERTIES XXXII, L.L.C.**, an Illinois limited liability company (the "**Borrower**"), **WILLIAM HARRIS SMITH** and **ROBERT BUONO** (collectively the "**Guarantor**"), and **CRYSTAL LAKE BANK & TRUST COMPANY, N.A.**, the "**Bank**"), with reference to the following facts:

RECITALS:

- A. On or about September 30, 2003, the Bank made a Seven Million Two Hundred Thousand and No/100 Dollars (\$7,200,000.00) loan to the Borrower (the "**Loan**").
- B. The Loan is evidenced by that certain Promissory Note in the principal amount of Seven Million Two Hundred Thousand and No/100 Dollars (\$7,200,000.00)

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payable to the order of the Bank and dated September 30, 2003 (the "**Note**") which evidences a loan made by the Bank to the Borrower (the "**Loan**"), and secured by that certain Mortgage, dated September 30, 2003, recorded with Cook County Recorder of Deeds as Document No. 0332442242 on November 20, 2003 (the "**Mortgage**"), and an Assignment of Rents dated September 30, 2003, recorded with Cook County Recorder of Deeds as Document No. 0332442243 (the "**Assignment**"), for the property located at 2408 Orrington Avenue, Evanston, Illinois. (the "**Property**") and legally described on Exhibit "**A**" which is attached hereto and made a part hereof.

C. As further security for the performance of its obligations with respect to the Loan, the Borrower executed and delivered to the Bank (i) that certain Commercial Guaranty dated September 30, 2003 (the "**Guaranty**"), (ii) a Uniform Commercial Code Financing Statement (the "**Financing Statement**"), (iii) a Hazardous Substances Certificate and Indemnity Agreement dated September 30, 2003 (the "**Indemnity Agreement**") and (iv) that certain Business Loan Agreement (the "**Business Loan Agreement**") dated September 30, 2003. (The Note, the Mortgage, the Financing Statement, the Indemnity Agreement, the Business Loan Agreement and any other documents and instruments relating to the Loan may hereinafter be referred to collectively as the "**Loan Documents**".)

D. On March 30, 2005, the Borrower and Guarantor made and delivered to the Bank, that certain Change In Terms Agreement wherein the Borrower, the Guarantor, and the Bank agreed to modify the Loan by extending the Maturity Date as defined in the Note.

E. On September 30, 2005, the Borrower and Guarantor made and delivered to the Bank, that certain Change In Terms Agreement wherein the Borrower, the Guarantor, and the Bank agreed to modify the Loan by extending the Maturity Date as defined in the Note.

F. On March 30, 2006, the Borrower and Guarantor made and delivered to the Bank, that certain Change In Terms Agreement wherein the Borrower, the Guarantor, and the Bank agreed to modify the Loan by extending the Maturity Date as defined in the Note.

G. On September 30, 2006, the Borrower and Guarantor made and delivered to the Bank, that certain Change In Terms Agreement wherein the Borrower, the Guarantor, and the Bank agreed to modify the Loan by extending the Maturity Date as defined in the Note.

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H. On March 30, 2007, the Borrower and Guarantor made and delivered to the Bank, that certain Change In Terms Agreement wherein the Borrower, the Guarantor, and the Bank agreed to modify the Loan by extending the Maturity Date as defined in the Note.

I. On June 30, 2007, the Borrower and Guarantor made and delivered to the Bank, that certain Change In Terms Agreement wherein the Borrower, the Guarantor, and the Bank agreed to modify the Loan by extending the Maturity Date as defined in the Note.

J. On September 1, 2007, the Borrower and Guarantor made and delivered to the Bank that certain Seventh Amendment to Promissory Note, Mortgage and Assignment of Rents ("**Seventh Amendment**") wherein the Borrower, the Guarantor, and the Bank agreed to modify the Loan by extending the Maturity Date as defined in the Note, and by increasing the principal amount of the Loan.

K. On or about September 22, 2008, but effective as of August 30, 2008, the Borrower and the Guarantor made and delivered to the Bank that certain Eighth Amendment to Promissory Note, Mortgage, and Assignment of Rents ("**Eighth Amendment**"), recorded with the Cook County Recorded of Deeds on September 25, 2008, as Document No. 0826745060, wherein the Borrower, the Guarantor, and the Bank agreed to modify the Loan by extending the Maturity Date and decreasing the principal amount of the Loan.

L. The unpaid principal balance of the Loan as of October 21, 2009, is Seven Million Two Hundred Eighty Seven Thousand Four Hundred Ninety Nine and 99/100 Dollars (\$7,287,499.99). The Borrower and the Guarantor wish to modify the Loan by extending the Maturity Date to December 30, 2009 and by decreasing the principal amount of the Loan by One Million Thirty Seven Thousand Five Hundred and No/100 Dollars (\$1,037,500.00) to Six Million Two Hundred Forty Nine Thousand Nine Hundred Ninety Nine and 99/100 Dollars (\$6,249,999.99). All principal and all accrued but unpaid interest, and other sums due and payable under the Note shall be paid on or before the Maturity Date. The Bank has agreed to modify the Loan to extend the Maturity Date and decrease the Loan amount in consideration of the agreements made herein by the Borrower and the Guarantor.

M. Thus, the Borrower, the Guarantor, and the Bank desire to modify certain terms and provisions under the Loan Documents.

NOW, THEREFORE, for valid consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

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1. **Recitals.** The Recitals set forth above are material and are incorporated into this Amendment by this reference as if they were fully set forth herein.

2. **Scope of Amendment.** Unless otherwise provided for elsewhere herein, this Amendment solely pertains to and modifies the Loan Agreement, the Note and the Loan Documents to the extent herein described and does not affect or alter any of the other terms and conditions of the Loan Documents or any other loan or other relationship to which the Borrower, the Guarantor and the Bank may be parties.

3. **Preservation of Rights.** Nothing in this Amendment or the negotiations and discussions relating hereto is intended to release or discharge the Borrower or the Guarantor from any of the obligations or personal liability, if any, under the Loan Documents, or any other documents executed in connection with the Loan, including any cross default or cross collateralization provisions in the Loan Documents, or any other loan or other relationship to which the Borrower, the Guarantor and the Bank may be parties.

4. **Reaffirmation of Loan.** Each of the undersigned, to the extent applicable (i) reaffirms all of its obligations under the Loan Documents (ii) acknowledges that no claims, offsets, or defenses exist with respect to the payment of sums due under the Loan Documents, (iii) acknowledges and consents to the modifications required pursuant to this Amendment, and (iv) acknowledges that, except as otherwise provided herein, each of the Loan Documents are hereby ratified, confirmed, and remain in full force and effect.

5. **Amendments to the Loan Documents.**

5.1 The Maturity Date as described in the Note, shall be amended to be, and read, December 30, 2009.

5.2 The principal sum outstanding from and after the date of this Amendment shall be Six Million Two Hundred Forty Nine Thousand Nine Hundred Ninety Nine and 99/100 Dollars (\$6,249,999.99). The Loan Documents, including the Note and the Mortgage, are hereby amended to reflect the principal sum outstanding as aforesaid.

5.3 The Index currently is 3.25% per annum. The interest rate to be applied to the unpaid principal balance of this Note will be the greater of the following: (i) at a rate equal to the Index plus .75% resulting in an initial rate of 4.0% per annum; or, (ii) 5.50%.

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6. **Conditions to the Bank's Forbearance.** The effect of this Amendment, shall be subject to the satisfaction of the following conditions precedent at or prior to the execution of this Amendment by the last of the parties, any of which may be waived by the Bank in its sole discretion:

6.1 If the Bank elects to conduct a current UCC Search, the Bank shall have conducted and completed such search of Article 9 U.C.C. liens, and other matters relating to the Borrower, and property encumbered by the Loan Documents, found no such liens encumbering such property, and extended the term, if necessary, of its Article 9 U.C.C. financing statements relating to the Loan;

6.2 The Bank shall have received such other documents and instruments as the Bank may reasonably require;

6.3 The Bank shall have received a principal payment from Borrower in the amount of One Million Thirty Seven Thousand Five Hundred and No/100 Dollars (\$1,037,500.00).

6.4 All of the representations and warranties set forth in this Amendment and any other document or instrument given by, or on behalf of, or at the request of the Borrower or the Guarantor to the Bank in connection with the transaction contemplated by this Amendment are true and complete in all respects;

6.5 No Event of Default (as defined in any of the Loan Documents) shall have occurred, and there shall be no state of facts existing which with the giving of notice or the passage of time or both would become a default under the Loan Agreement, the Note or any other Loan Documents;

6.6 The Borrower shall have paid all of the costs and expenses of documenting and closing the transaction contemplated by this Amendment, including, but not be limited to any U.C.C. search fees, closing fees, and attorneys' fees, plus costs and disbursements made by the Bank and its attorneys.

7. **Representations and Warranties.** When the Borrower and the Guarantor execute this Amendment, they represent and warrant to the Bank that:

7.1 That to the best of the Borrower's and the Guarantor's knowledge the Property and its current use are in compliance with all applicable laws, ordinances, rules, regulations and requirements of all governmental authorities, having or purporting

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to have jurisdiction over the Property, including without limitation, those laws, ordinances, rules, regulations and requirements pertaining to hazardous wastes, toxic materials, underground storage tanks, zoning, subdivision, building, housing, safety, fire and health, and that neither the Borrower and nor the Guarantor have received any notices of violation thereof from any such governmental authority which have not been cured or corrected, the cure or correction thereof having been confirmed in writing by said governmental authority;

7.2 That neither the Borrower nor the Guarantor have any present intention of filing any petition, initiating any proceeding under, or otherwise seeking the protection of the United States Bankruptcy Code or any state law concerning bankruptcy, reorganization, insolvency, moratorium, receivership or creditor's rights or debtor's obligations generally, or making an assignment for the benefit of creditors or entering into a composition or similar agreement;

7.3 During the term of the Loan, that to the best of the Borrower's and the Guarantor's knowledge there was nor currently is any threatened or pending litigation regarding the Borrower, the Guarantor or the Property.

7.4 The execution of this Amendment is not contrary to any agreements of the Borrower or the Guarantor with any third party.

8. **Affixation to Note.** A duplicate original of this Amendment shall be affixed to the Note.

9. **Conditions.** This Amendment shall be effective when the Bank receives, in form and content acceptable to the Bank, evidence that the execution, delivery and performance by the Borrower and the Guarantor of this Amendment and any instrument or agreement required under this Amendment have been duly authorized.

10. **Construction.** The language in all parts of this Amendment in all cases shall be construed simply according to its fair meaning and not strictly for or against any party. All words used herein in the singular number shall extend to and include the plural number. All words used herein in the plural number shall extend to and include the singular number. All words used in any gender, male, female or neuter shall extend to and include all genders as may be applicable in any particular context. Captions and headings contained in this Amendment are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Amendment or the intent of any provision of this Amendment. This Amendment has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein.

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Accordingly, among other things, any rule of law or any other statute, legal decision or common law principle that would require interpretation of any ambiguities in this Amendment against the party that has drafted this Amendment are of no application, and are hereby expressly waived by all parties hereto.

11. **Definitions.** All capitalized terms used in this Amendment and not otherwise defined herein shall have the meaning ascribed to them in the Loan Documents.

12. **Recording.** This Amendment may be recorded with the Recorder of Cook County, Illinois.

13. **Priority of Mortgage.** The Mortgage shall in all respects as of the date of recording of this Amendment be a valid and existing first mortgage lien covering the Property.

14. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Illinois.

15. **Counterparts.** This Amendment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

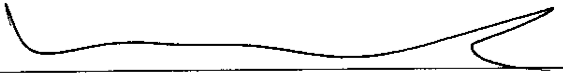
[SIGNATURE PAGES TO FOLLOW]

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IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed and effective as of the day and year first above written.

THE BORROWER:
SMITHFIELD PROPERTIES XXXII, L.L.C.,
an Illinois limited liability company

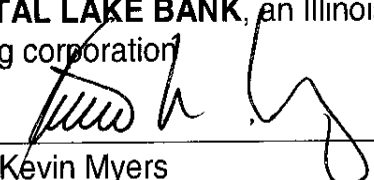
HARRIS MANAGEMENT, LTD., an Illinois corporation
Manager of Smithfield Properties XXXII, L.L.C.

By: 
(W. HARRIS SMITH)
Its: PRESIDENT
Date: October 28, 2009, effective as of September 1, 2009

NORWOL CORPORATION, an Illinois corporation
Manager of Smithfield Properties XXXII, L.L.C.

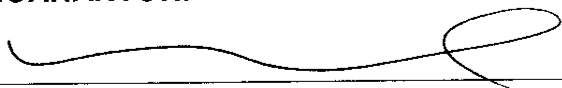
By: 
(ROBERT BURT)
Its:
Date: October 28, 2009, effective as of September 1, 2009

BANK:
CRYSTAL LAKE BANK, an Illinois
banking corporation

By: 
Kevin Myers
Its: Vice President
Date: October 28, 2009, effective as of September 1, 2009

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GUARANTOR:



William Harris Smith

Date: October 28, 2009, effective as of September 1, 2009



Robert Buono

Date: October 28, 2009, effective as of September 1, 2009

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STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, State of Illinois, do hereby certify that **SMITHFIELD PROPERTIES XXXII, L.L.C.** by its Manager, **HARRIS MANAGEMENT, LTD.**, by WYNDA SUE TH its PRESIDENT as personally appeared before me this day and acknowledged that as such officer, he/she signed and delivered said instrument as his/her free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of April, 2009.

Lawrence M Gritton
Notary Public
My Commission expires: _____
OFFICIAL SEAL
Lawrence M Gritton
Notary Public, State of Illinois
Commission Expires 2/19/2012

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, State of Illinois, do hereby certify that **SMITHFIELD PROPERTIES XXXII, L.L.C.** by its Manager **NORWOL CORPORATION**, by ROBERT BRONO its PRESIDENT personally appeared before me this day and acknowledged that as such officer, he/she signed and delivered said instrument as his/her free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of April, 2009.

Lawrence M Gritton
Notary Public
My Commission expires: _____
OFFICIAL SEAL
Lawrence M Gritton
Notary Public, State of Illinois
Commission Expires 2/19/2012

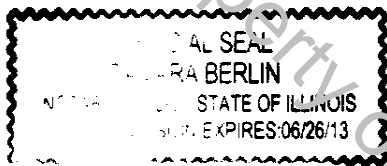
v3 Ninth Amendment to Promissory Note
- Smithfield Properties XXXII 10_27_09

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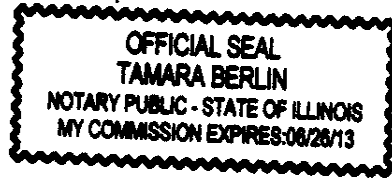
STATE OF ILLINOIS)
) SS.
COUNTY OF McHenry)

I, the undersigned, a Notary Public in and for said County, State of Illinois, do hereby certify that Kevin Myers, Vice President of **CRYSTAL LAKE BANK**, an Illinois banking corporation, personally appeared before me this day and acknowledged that as such officer, he signed and delivered said instrument as his free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 4th day of November, 2009.



Tamara Berlin
Notary Public
My Commission expires: _____



STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, State of Illinois, do hereby certify that **WILLIAM HARRIS SMITH**, personally appeared before me this day and acknowledged that he signed and delivered said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2th day of October, 2009.

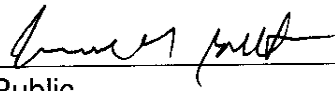
Lawrence M Gritton
Notary Public
My Commission expires: _____
"OFFICIAL SEAL"
Lawrence M Gritton
Notary Public, State of Illinois
Commission Expires 2/19/2012

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STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, State of Illinois, do hereby certify that **ROBERT BUONO**, personally appeared before me this day and acknowledged that he signed and delivered said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21st day of October, 2009.



Notary Public
My Commission expires: _____



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EXHIBIT A

PARCEL 1:

LOT 1 IN KENDALL COLLEGE CONSOLIDATION OF PART OF THE EAST $\frac{1}{2}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 1 AND THE NORTH 31 FEET OF LOT 2 IN BLOCK 1 IN ORRINGTON ADDITION TO EVANSTON IN THE SOUTHWEST $\frac{1}{4}$ OF FRACTIONAL SECTION 7, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE SOUTH 50 FEET OF LOT 3 IN BLOCK 1 IN ORRINGTON ADDITION TO EVANSTON IN THE SOUTHWEST $\frac{1}{4}$ OF FRACTIONAL SECTION 7, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4

THE NORTH 31 FEET OF LOT 3 AND THE SOUTH 19 FEET OF LOT 2 IN BLOCK 1 IN ORRINGTON ADDITION TO EVANSTON IN THE SOUTHWEST $\frac{1}{4}$ OF FRACTIONAL SECTION 7, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO DESCRIBED AS FOLLOWS:

LOTS 1 THROUGH 20 AND OUTLOT 21 IN EVANSTON HOMES SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SUBDIVISION RECORDED AS DOCUMENT 0628939022, IN COOK COUNTY, ILLINOIS.

Common Address: 2408 Orrington Avenue, Evanston, IL 60201

PIN: 11-07-110-007-015-0000; 11-07-110-007-016-0000; 11-07-110-007-017-0000; 11-07-110-007-018-0000; 11-07-110-007-019-0000; 11-07-110-007-020-0000; 11-07-110-007-021-0000; 11-07-110-007-022-0000; 11-07-110-007-023-0000; 11-07-110-007-

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024-0000; 11-07-110-007-025-0000; 11-07-110-007-026-0000; 11-07-110-007-027-0000; 11-07-110-007-028-0000; 11-07-110-007-029-0000; 11-07-110-007-030-0000; 11-07-110-007-031-0000; 11-07-110-007-032-0000; 11-07-110-007-033-0000; 11-07-110-007-034-0000; 11-07-110-007-035-0000;

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v3 Ninth Amendment to Promissory Note
- Smithfield Properties XXXII 10_27_09