

# UNOFFICIAL COPY

This document was prepared by,  
and after recording, return to:

Ned S. Robertson  
Aronberg Goldgehn  
330 North Wabash Avenue, Suite 1700  
Chicago, Illinois 60611

Property Address: 900 Rand Road  
Des Plaines, Illinois

Parcel ID Numbers:  
09-08-300-005-0000;  
09-08-300-006-0000



Doc#: 1016610099 Fee: \$52.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 06/15/2010 04:26 PM Pg: 1 of 9

*This space reserved for Recorders use only.*

## LOAN MODIFICATION AGREEMENT

This Loan Modification Agreement ("Agreement") is entered into as of the 2nd day of June, 2010 but effective as of April 30, 2010 ("Effective Date"), by and among 900 RAND, LLC, an Illinois limited liability company ("Borrower"), LAWRENCE A. DEBB, JOHN J. KOSICH (individually and collectively, the "Guarantor") and COLE TAYLOR BANK ("Lender").

### RECITALS:

A. Lender made a construction loan to Borrower in the amount of \$14,500,000.00 ("Loan"), as evidenced by that certain Note dated October 11, 2007, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note"), of which \$12,293,144.36 remains outstanding.

B. The Note is secured by, among other things, (i) a Construction Loan Agreement ("Loan Agreement") dated October 11, 2007 between Borrower and Lender, (ii) a Construction Mortgage ("Mortgage") dated October 11, 2007 from Borrower to Lender, constituting a first lien on the Premises, which is legally described on Exhibit A attached hereto, and recorded with the Cook County, Illinois Recorder as Document No. 0729133045, (iii) a Collateral Assignment of Rents and Leases ("Assignment") dated October 11, 2007 from Borrower to Lender, and recorded with the Cook County, Illinois Recorder as Document No. 0729133046, (iv) a Security Agreement ("Security Agreement") dated October 11, 2007 between Borrower and Lender, (v) an Environmental Indemnity Agreement ("Indemnity Agreement") dated October 11, 2007 from Borrower and Guarantor to Lender; and (vi) certain other loan documents (the Loan Agreement, Note, the Mortgage, the Assignment, Security Agreement, the Indemnity Agreement, the other

# UNOFFICIAL COPY

documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty of Payment and Performance dated October 11, 2007, from Guarantor to Lender (the "Guaranty").

D. The Borrower has requested that Lender extend the maturity date of the Note to September 5, 2010, and the Lender has agreed to do so, subject to the provisions of this Agreement.

**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 to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Capitalized Terms. Except as otherwise expressly indicated herein, all capitalized terms used herein shall have the same meaning ascribed to them in the Loan Agreement and the other documents referred to therein.

2. Amendments to the Loan Agreement. The Loan Agreement is hereby amended for the period after the Effective Date through the Maturity Date, as follows:

(a) Section 1.1 V is deleted in its entirety and the following is inserted in its place to read as follows:

“V. ‘Loan Rate’ shall mean the greater of (i) Prime Rate per annum plus one percent (1%) and (ii) five and fifty one-hundredths percent (5.50%).”

(b) Section 1.1 W is deleted in its entirety and the following is inserted in its place to read as follows:

“W. ‘Maturity Date’ shall mean September 5, 2010.”

(c) Section 1.1 Z is deleted in its entirety and the following is inserted in its place to read as follows:

“Z. ‘Note’ shall mean that certain Note, together with any and all amendments, renewals, extensions, modifications or replacements thereof, dated as of the date hereof executed by Borrower payable to the order of Lender in the amount of \$12,293,144.36.”

(d) Section 1.1 DD is deleted in its entirety and the following is inserted in its place to read as follows:

“DD. ‘Principal Sum’ shall mean \$12,293,144.36.”

# UNOFFICIAL COPY

3. Amendments to the Note. The Note is hereby amended for the period after the Effective Date through the Maturity Date, as follows:

- (a) The Principal Sum of the Note is \$12,293,144.36.
- (b) The Maturity Date is September 5, 2010.
- (c) Section 1.3(c) is deleted in its entirety and the following is inserted in its place to read as follows:

“(c) Loan Rate Defined. The “Loan Rate” as used herein shall mean the greater of (i) Prime Rate per annum plus one percent (1%) and (ii) five and fifty one- hundredths percent (5.50%).”

4. Amendments to the Mortgage. The Mortgage is hereby amended for the period after the Effective Date as follows:

- (a) Section 1.1 M is deleted in its entirety and the following is inserted in its place to read as follows:

“M. ‘Loan Rate’ shall mean the greater of (i) Prime Rate per annum plus one percent (1%) and (ii) five and fifty one- hundredths percent (5.50%).”

- (b) Section 1.1 Q is deleted in its entirety and the following is inserted in its place to read as follows:

“Q ‘Note’ shall mean a Note, together with any and all amendments, renewals, extensions, modifications or replacements thereof, which Mortgagor has executed and delivered to Mortgagee, of even date herewith, in the principal amount of \$14,500,000.00, wherein Mortgagor promises to pay on or before September 5, 2010 (the “Maturity Date”), to the order of Mortgagee, Fourteen Million Five Hundred Thousand and No/100 Dollars (\$14,500,000.00), or such lesser amount as may have been disbursed by Mortgagee, plus interest as provided in the Note. Interest only on the Principal Balance of the Note shall be computed from the date of initial funding under the Note at the Loan Rate and shall be paid monthly in arrears commencing on the first day of December, 2007, and thereafter on the first day of each succeeding month through and including the Maturity Date. A final balloon payment of all of the Principal Balance of the Note and unpaid interest accrued thereon shall become due, if not sooner paid or due by acceleration or otherwise, on the Maturity Date. Notwithstanding the foregoing, after maturity of the Note or the occurrence of an Event of Default, the interest rate shall be increased to the Default Rate until the Note is fully paid or, at the sole option of Mortgagee, until the Event of Default is cured to the satisfaction of Mortgagee and the Loan is reinstated. THIS IS A BALLOON MORTGAGE.”

5. Representations and Warranties of Borrower. Borrower hereby represents, covenants and warrants to Lender as follows:

# UNOFFICIAL COPY

(a) The representations and warranties in the Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Note) under the Loan Documents and Borrower does not 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 any of the 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 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, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. 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. This Agreement has been duly executed and delivered on behalf of Borrower.

6. Reaffirmation of Guaranty. Each 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. The representations and warranties of such Guarantor in the Guaranty are, as of the date hereof, true and correct and such 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 such Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder.

7. Expenses. As a condition 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.

8. 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 or Guarantor merely by virtue of the fact that the same has been

# UNOFFICIAL COPY

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 acknowledges and waives 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 or a Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) 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.

(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 "Loan Agreement", the "Note", or the "Mortgage" contained in any of the Loan Documents shall be deemed to refer to the Loan Agreement, the Note, the 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) Time is of the essence of each of Borrower's obligations under this Agreement.

(h) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same instrument. A facsimile transmission of an executed counterpart of this Agreement shall be proof of execution hereof.

# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement has been entered into as of the date first above written.

**BORROWER:**

**900 RAND, LLC**, an Illinois limited liability company

By: **DEBB KOSICH L.L.C.**, an Illinois limited liability company, Manager

By: *[Signature]*  
One of its Managers

**GUARANTORS:**

*[Signature]*  
Lawrence A. Debb, individually

*[Signature]*  
John J. Kosich, individually

**LENDER:**

**COLE TAYLOR BANK**

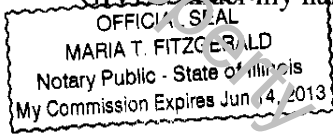
By: *[Signature]*  
Name: DEBBIE ROURKE  
Title: SENIOR VICE PRESIDENT

# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that \_\_\_\_\_, one of the Managers of DEBB KOSICH L.L.C., an Illinois limited liability company, the Manager of 900 RAND, LLC, an Illinois limited liability company, who is 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 DEBB KOSICH L.L.C., an Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2 day of June, 2010.

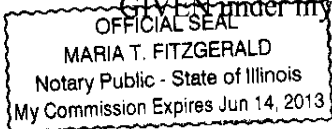


*Maria Fitzgerald*  
\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Lawrence A. Debb who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2 day of June, 2010.

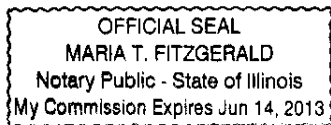


*Maria Fitzgerald*  
\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that John J. Kosich who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2 day of June, 2010.



*Maria Fitzgerald*  
\_\_\_\_\_  
Notary Public

# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that DENNIS ROURKE the S.V.P. of COLE TAYLOR BANK an Illinois banking corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such S.V.P., appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Lender, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 7<sup>th</sup> day of June, 2010.

Michaeline A. Manos  
Notary Public





# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF REAL ESTATE

LOTS 1 AND 2 IN FOUR-ESS SUBDIVISION, BEING A SUBDIVISION IN THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 8, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office