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Doc#: 0629122080 Fee: \$50.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 10/18/2006 11:33 AM Pg: 1 of 14

ILLINOIS

Permanent Tax Index Number:

03 04 201 024 0000

Property Address:

400-500 Mand. Lane  
Wheeling, Illinois 60090

*This space reserved for Recorder's use only.*

## FIRST MODIFICATION OF LOAN DOCUMENTS AND WAIVER OF COVENANT VIOLATIONS

by

Pine Hill Properties, LLC,

an Illinois limited liability company, Brian E. Basu, and Brian Kuzdas

to and for the benefit of

LASALLE BANK NATIONAL ASSOCIATION,  
a national banking association

**THIS DOCUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:**

Aaron B. Zarkowsky  
Deutsch, Levy & Engel, Chartered  
225 W. Washington Street, Suite 1700  
Chicago, Illinois 60606

235717-1

9/11/2006 9:10 AM

BOX 334 CTT

VL 60258411 L

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## FIRST MODIFICATION OF LOAN DOCUMENTS AND WAIVER OF COVENANT VIOLATIONS

**THIS FIRST MODIFICATION OF LOAN DOCUMENTS AND WAIVER OF COVENANT VIOLATIONS** (this "Modification") is made as of the 29<sup>th</sup> day of September, 2006, by and among Pine Hill Properties, LLC, an Illinois limited liability company ("Borrower"), Brian E. Basic and Brian Kuzdas (each a "Guarantor" and together the "Guarantors") and LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender").

### RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Twenty-One Million Nine Hundred Fifty Thousand and no/100 Dollars (\$21,950,000) pursuant to the terms and conditions of a Construction Loan Agreement dated as of December 16, 2004 between Borrower and Lender, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated December 16, 2004, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, the following documents each dated as of December 16, 2004, (i) that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on December 29, 2004, as Document No. 0436434073 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and Leases from Borrower to Lender and recorded in the Recorder's Office on December 29, 2004 as Document No. 0436434074 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement from Borrower and the Guarantors to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other 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 Completion dated as of December 16, 2004 from the Guarantors to Lender (the "Guaranty").

D. Pursuant to the terms of the Loan Agreement, Borrower was obligated to meet certain presale requirements set forth in Section 13.3(a) of the Loan Agreement ("Presale Requirements"). Notwithstanding Borrower's obligations set forth therein, Borrower failed to satisfy such presale requirements and failed to reduce the outstanding principal balance of the Loan pursuant to section 13.3(b) of the Loan Agreement; such failures being Events of Default of the Loan Agreement.

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E. Notwithstanding the Events of Default of the Loan Agreement as set forth above, the Lender has, pursuant to the terms and conditions of this Modification, agreed to waive such Events of Default, and modify the Loan Documents upon the terms and conditions hereinafter set forth.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Modification as representations and warranties of Borrower and the Guarantors), (ii) the agreements by Lender to waive the Events of Default and 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. **Waiver of Event of Default.** Borrower and the Guarantor, jointly and severally acknowledge and agree as follows:

(a) **Acknowledgment of Event of Default.** That (i) on and as of the date hereof, as a result of Borrower's failure to comply with the Presale Requirements set forth in Section 13.3(a) of the Loan Agreement, and the resizing provisions of Section 13.3(b) of the Loan Agreement (together the "Existing Default"), Events of Default of the Loan Agreement existed and continues to exist under the Loan Agreement and the Loan Documents; (ii) all grace periods, if any, applicable to the cure of the Existing Default after receipt of such notice has expired; and (iii) Lender has not previously waived in any respect their right to demand acceleration of the Loan and/or bring remedial action against the Borrower or Guarantor on account of the Existing Default.

(b) **Acknowledgment of Obligations.** That (i) Borrower is indebted to the Lender as of the effective date of this Modification in the aggregate outstanding principal amount of the Loan (such principal amount is for illustrative purposes only and shall not be deemed to be the amount required to pay in full the Loan, and specifically does not include accrued but unpaid interest, fees, costs and other obligations due by the Borrower to the Lender); (ii) as a result of the Existing Default such amount is due and payable in full, without offset, deduction or counterclaim of any kind or character whatsoever, but are subject to increase, decrease or other adjustment as the result of any and all interest, fees and other charges including, without limitation, attorneys' fees and costs of collection, which are payable under the Loan Documents; and (iii) Guarantor is obligated to the Lender in the amount set forth in the Guaranty and Guarantor's obligations to the Lender for those amounts are not subject to any set off, claim or defense of any kind or character whatsoever.

(c) **Acknowledgment that Obligations Continue in Full Force and Effect.** That the Note and all other liabilities and obligations of Borrower and the Guarantors to the Lender under the Note, the Loan Agreement, and all of the other Loan Documents shall

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remain in full force and effect, and shall not be released, impaired, diminished or in any other way modified or amended as a result of the execution and delivery of this Modification except as otherwise specifically provided herein.

(d) Waiver of Default. Borrower has requested that Lender waive the Existing Default, and pursuant to this Modification, and Lender has agreed to waive the Existing Default. Except as and to the limited extent otherwise expressly provided herein with respect to the Existing Default, nothing in this Modification shall be construed as a waiver by the Lender of any promises, covenants, conditions or obligations of the Borrower under the Loan Documents or as a waiver by the Lender of any past, present or future Event of Default.

(e) Release. Borrower and the Guarantors each hereby acquit, and forever discharge the Lender and each and every past and present subsidiary, affiliate, stockholder, officer, director, agent, servant, employee, representative, and attorney of the Lender from any and all claims, causes of action, suits, debts, liens, obligations, liabilities, demands, losses, costs and expenses (including attorneys' fees) of any kind, character, or nature whatsoever, known or unknown, fixed or contingent, which the Borrower or the Guarantors may have or claim to have now or which may hereafter arise out of or be connected with any act of commission or omission of the Lender existing or occurring prior to the date of this Modification or any instrument executed prior to the date of this Modification including, without limitation, any claims, liabilities or obligations arising with respect to the indebtedness evidenced by the Note or any of the other Loan Documents. The provisions of this Section 1 shall be binding upon the Borrower, the Guarantors and their respective heirs, executors and administrators and shall inure to the benefit of the Lender, and its successors and assigns, and shall survive the termination of this Modification.

## 2. Modifications to the Loan Agreement.

(a) Section 1.1 of the Loan Agreement is hereby amended by amending and restating the definition of Completion Date to read as follows:

**“Completion Date:** December 22, 2006.”

(b) Section 1.1 of the Loan Agreement is hereby further amended by inserting the following definition in the appropriate alphabetical order:

**“Extended Maturity Date:** September 22, 2007.”

(c) Article 3 of the Loan Agreement is hereby amended by adding the following new section 3.5 thereto:

**“3.5 Extension of the Maturity Date.** Notwithstanding anything to the contrary contained herein, provided that (i) no Event of Default, or an event which, with the giving of notice, passage of time, or both, would constitute such an Event of Default, has occurred, and

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(ii) Borrower has satisfied the presale requirements set forth in Section 13.3(a) of this Agreement, Borrower shall have a one (1) time, irrevocable option to extend the Maturity Date from the date set forth herein to the Extended Maturity Date. Borrower shall notify Lender, in writing, not less than thirty (30) days prior to the Maturity Date of Borrower's desire to extend the Maturity Date to the Extended Maturity Date. In addition to Borrower's written notice to Lender, Borrower shall simultaneously pay to Lender an extension fee ("Extension Fee") in an amount equal to Twenty-Seven Thousand Four Hundred Thirty-Seven and no/100 Dollars (\$27,437). If this extension option is exercised, effective upon the Maturity Date, the terms of this Agreement and the other Loan Documents shall be deemed to be interpreted such that the Maturity Date shall thereafter be the Extended Maturity Date and such date shall be incorporated into each and every Loan Document. All other terms and conditions of this Agreement and each and every Loan Document shall remain in full force and effect."

(d) Section 13.3 of the Loan Agreement is hereby amended by (i) deleting the numerical reference "thirty-five (35);" and (ii) inserting in its place the numerical reference "ninety-three (93)."

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

(a) The representations and warranties in 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 Mortgage) under the Note, the Mortgage or the other 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 the 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 Modification, 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

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Modification and to perform the Loan Documents as modified herein. The execution and delivery of this Modification 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 Modification has been duly executed and delivered on behalf of Borrower.

4. **Reaffirmation of Guaranty.** The Guarantors ratify and affirm the Guaranty and agree that the Guaranty is in full force and effect following the execution and delivery of this Modification. The representations and warranties of the Guarantors in the Guaranty are, as of the date hereof, true and correct and neither Guarantor knows of any default thereunder. The Guaranty continues to be the valid and binding obligation of each 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. **Conditions Precedent.** The agreement of Lender to waive the Existing Default and to amend the Loan Documents as set forth herein is subject to the following conditions precedent:

(a) Lender shall have received this Modification duly executed by an authorized individual for each entity and individual that is a party hereto.

(b) Lender shall have received resolutions of Borrower approving the execution of this Modification in form and content acceptable to Lender.

(c) Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. \_\_\_\_\_ (the "Title Policy"), as of the date this Modification is recorded, reflecting the recording of this Modification and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

(d) Borrower shall pay to the Lender a non-refundable fee in the amount of Twenty-Seven Thousand Four Hundred Thirty-Seven and no/100 Dollars (\$27,437) in consideration of Lender's agreement to waive the Existing Default.

(e) Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Modification, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

(f) Lender shall have received such other documents as may be reasonably requested by Lender or its counsel.

6. **Miscellaneous.**

(a) This Modification shall be governed by and construed in accordance with the laws of the State of Illinois.

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(b) This Modification shall not be construed more strictly against Lender than against Borrower or the Guarantors merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, the Guarantors and Lender have contributed substantially and materially to the preparation of this Modification, and Borrower, the Guarantors 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 Modification. Each of the parties to this Modification represents that it has been advised by its respective counsel of the legal and practical effect of this Modification, and recognizes that it is executing and delivering this Modification, 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 Modification, 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 Modification by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or the Guarantors nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, the Guarantors 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 Modification, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, the Guarantors and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Modification. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Modification 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" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to 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) This Modification may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Modification.

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

**LENDER:**

**LASALLE BANK NATIONAL ASSOCIATION,  
a national banking association**

By: *Len A Clark*  
Name: Len A. Clark  
Title: Vice President

**BORROWER:**

Pine Hill Properties, LLC, an Illinois limited liability company

By: OAC Management Co., an Illinois corporation, its manager

By: \_\_\_\_\_  
Name: Brian Kuzdas  
Title: President

**GUARANTOR:**

\_\_\_\_\_  
Brian Kuzdas

\_\_\_\_\_  
Brian E. Basic

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

**LENDER:**

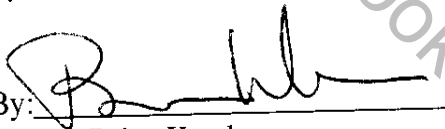
**LASALLE BANK NATIONAL ASSOCIATION,  
a national banking association**

By: \_\_\_\_\_  
Name: Lori A. Clark  
Title: Vice President


**BORROWER:**

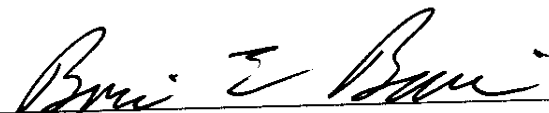
Pine Hill Properties, LLC, an Illinois limited liability company

By: OAC Management Co., an Illinois corporation, its manager

By:   
Name: Brian Kuzdas  
Title: President

**GUARANTOR:**

  
Brian Kuzdas

  
Brian E. Basic

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STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF COOK     )

I Georgia Akers, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Lori A. Clark, Vice President of LaSalle Bank National Association, 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 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 27 day of Sept,  
2006

Georgia Akers  
Notary Public

My Commission Expires: 6-20-09

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STATE OF ILLINOIS     )  
  ) .ss  
COUNTY OF COOK        )

I \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Lori A. Clark, Vice President of LaSalle Bank National Association, 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 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 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF ILLINOIS     )  
  )        ss  
COUNTY OF Cook        )

I the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Brian Kuzdas, individually, and as President of OAC Management Co., an Illinois corporation, manager of Pine Hill Properties, LLC, an Illinois limited liability company, 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 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 29 day of September, 2008.

\_\_\_\_\_  
Notary Public



My Commission Expires: \_\_\_\_\_

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STATE OF ILLINOIS    )  
                                  ) SS  
COUNTY OF Cook    )

I *Heimberg*, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Brian E. Basic 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 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 *29* day of *Sept*, 20*07*



*[Signature]*  
Notary Public

My Commission Expires: \_\_\_\_\_

*Property of Cook County Clerk's Office*

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## EXHIBIT A

### THE PROPERTY

LOT 1 IN PINE HILL, A SUBDIVISION OF PART OF THE NORTHEAST 1/4 AND PART OF THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 400-500 Manda Lane, Wheeling (Cook County), Illinois

PN 03-04-201-024-0000

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