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Doc#: 0814331093 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/22/2008 03:55 PM Pg: 1 of 10

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MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 12th day of May, 2008, but is effective as of April 19, 2008, by and among **DAVIS DESIGN GROUP, LLC**, an Illinois limited liability company ("Borrower"), **PROJECT #RR 107-5906 OF DAVIS DESIGN GROUP, LLC**, an Illinois limited liability company ("Mortgagor"), **JAMES KILEY**, individually, and **LYNN KILEY**, individually, (collectively, the "Guarantor"), 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 One Million Six Hundred Forty Thousand and 00/100ths Dollars (\$1,640,000.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of April 19, 2007, 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 April 19, 2007, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

This document prepared by and after recording return to:

James J. Ginsburg, Esq.
Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

Permanent Index Numbers:

17-03-226-065-1182

Address of Property:

180 East Pearson, Unit 5906
Chicago, Illinois



481144.2 013151-39854

Near North National Title
222 N. LaSalle
Chicago, IL 60601

01070319 LC (of)

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B. The Loan is secured by a Construction Mortgage dated April 19, 2007, from Mortgagor to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on May 2, 2007, as Document No. 0712226069 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit "A" hereto ("Property"). The Note, the Mortgage, the Loan Agreement, the Related Documents (as defined in the Loan Agreement), and any 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 dated April 19, 2007, from Guarantor to Lender (the "Guaranty").

D. Borrower desires to amend the Loan Documents in order to: (i) extend the maturity date of the Note and (ii) revise the repayment schedule of the Loan.

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 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. **Maturity Date.** The maturity date of the Note is extended to October 19, 2008. Any reference in the Note, the Mortgage, the Loan Agreement or any other Loan Document to the maturity date or the date upon which the final payment of all outstanding principal and accrued and unpaid interest is due shall mean October 19, 2008 (hereinafter referred to as the "Maturity Date").

2. **Repayment.** Notwithstanding anything contained in the Note to the contrary, effective as of April 19, 2008, payments of principal and interest, if not sooner declared to be due in accordance with the provisions the Note or the other Loan Documents, shall be made as follows:

(a) On May 19, 2008, and continuing on the nineteenth (19th) day of each month thereafter, through and including the month in which the Maturity Date occurs, Borrower shall make payments of all accrued and unpaid interest on the outstanding principal balance at the Applicable Rate (as defined in the Note).

(b) The unpaid principal balance of the Note, if not sooner paid or declared to be due in accordance with the terms of the Note, together with all accrued and unpaid interest thereon and any other amounts due and payable under the Note or under any of the Loan Documents shall be due and payable in full on the Maturity Date.

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3. **Extension Fee.** Upon the execution of this Agreement, and as an express condition precedent to the effectiveness of this Agreement, Borrower shall pay to Lender a non-refundable extension fee in the amount of One Thousand and 00/100 Dollars (\$1,000.00).

4. **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. 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. **Representations and Warranties of Borrower.** Borrower, Guarantor, and Mortgagor each, for itself, hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage, the Guaranty, 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 and Mortgagor 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 Agreement, they continue to be the legal, valid and binding obligations of Borrower, Guarantor, and Mortgagor, as the case may be, 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, Mortgagor 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 and Mortgagor have no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower and Mortgagor are validly existing under the laws of the State of their 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 and Mortgagor. This Agreement has been duly executed and delivered on behalf of Borrower and Mortgagor.

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6. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Near North National Title, LLC to issue an endorsement to Lender's Title Insurance Policy No. 01070319 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement 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.

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

(d) Borrower, Guarantor, Mortgagor 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, Mortgagor 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.

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(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" 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 Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's and Mortgagor's obligations under this Agreement.

9. **Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act.** Lender hereby notifies Borrower and Mortgagor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Borrower and Mortgagor, which information includes the name and address of Borrower and Mortgagor and such other information that will allow Lender to identify Borrower and Mortgagor in accordance with the Act. In addition, Borrower shall (a) ensure that no person who owns a controlling interest in or otherwise controls Borrower or any subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

LENDER:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: [Signature]
Name: GILES R. MCCARTHY
Title: FIRST VICE PRESIDENT

BORROWER:

DAVIS DESIGN GROUP LLC, an Illinois limited liability company

By: [Signature]
Name: Lynn M. Kiley
Title: Authorized Member

MORTGAGOR:

PROJECT #RR 107-5906 OF DAVIS DESIGN GROUP LLC, an Illinois limited liability company

By: [Signature]
Name: Lynn M. Kiley
Title: Authorized Member

GUARANTOR:

[Signature]
JAMES KILEY, individually

[Signature]
LYNN KILEY, individually

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STATE OF ILLINOIS)
)
) .ss
COUNTY OF COOK)

I Donna K. Krick, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that GILES MCCARTHY, 1ST VP 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 6 day of May, 2008.



Donna K. Krick
Notary Public

My Commission Expires: _____

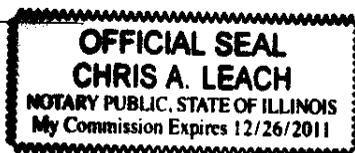
STATE OF ILLINOIS)
)
) .ss
COUNTY OF Cook)

I Chris A. Leach, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Lynn M. Kiley, the Authorized Member of Davis Design Group 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 6th day of May, 2008.

Chris A. Leach
Notary Public

My Commission Expires: _____



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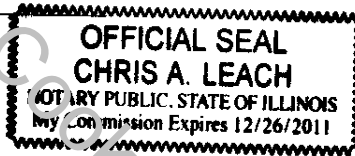
STATE OF ILLINOIS)
)
) .ss
COUNTY OF Cook)

I Chris A. Leach, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Lynn M. Kiley, the Authorized Member of Project #RR 107-5906, 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 6th day of May, 2009.

Chris A. Leach
Notary Public

My Commission Expires: _____



STATE OF ILLINOIS)
)
) .ss
COUNTY OF Cook)

I Chris A. Leach, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that James Kiley, 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 6th day of May, 2009.

Chris A. Leach
Notary Public

My Commission Expires: _____



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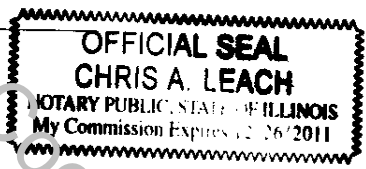
STATE OF ILLINOIS)
).ss
COUNTY OF Cook)

I Chris A Leach, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Lynn Kiliey, 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 6th day of May, 2008.

Chris A Leach
Notary Public

My Commission Expires:



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EXHIBIT A

THE PROPERTY

UNIT 5906 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN 180 EAST PEARSON CONDOMINIUM AS DELINEATED AND DEFINED IN THE DECLARATION RECORDED AS DOCUMENT NO. 23432350, AS AMENDED, IN THE SOUTHWEST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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