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Doc#: 0829729066 Fee: \$50.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/23/2008 02:55 PM Pg: 1 of 8

THIS DOCUMENT PREPARED BY:

Crowley & Lamb, P.C.
350 North LaSalle Street, Suite 900
Chicago, Illinois 60654

AFTER RECORDING RETURN TO:

Diamond Bank, FSB
100 West North Avenue
Chicago, IL 60610
Attn: Vice President

This space reserved for Recorder's use only

FIFTH MODIFICATION OF LOAN DOCUMENTS

THIS FIFTH MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made effective as of the 30th day of May, 2008, by and among **BRIAN SULLIVAN** ("Borrower") and **MARY T. SULLIVAN**, having an address at 1525 Circle Avenue, Suite 6, Forest Park, Illinois 60130 and **DIAMOND BANK FSB**, its successors and assigns (the "Mortgagee"), having an address at 100 West North Avenue, Chicago, Illinois 60610 ("Lender").

RECITALS:

A. Lender has heretofore made a construction loan ("Loan") to Borrower in the principal amount of SIX HUNDRED TEN THOUSAND AND NO/100THS DOLLARS U.S. (\$610,000.00), as evidenced by a Non-Revolving Line of Credit Note dated October 25, 2006, in the principal amount of the Loan made payable by Borrower to the order of Lender, as amended and restated by that certain Non-Revolving Line of Credit Note dated as of November 1, 2007 executed by Borrower in favor of Lender, as amended and restated by that certain Non-Revolving Line of Credit Note dated as of December 1, 2007 executed by Borrower in favor of Lender and as amended and restated by that certain Third Amended and Restated Non-Revolving Line of Credit Note dated February 29, 2008 executed by Borrower in favor of Lender in the amount of the Loan (the "Note").

B. The Note is secured by, among other things,

I: (i) that certain Mortgage and Security Agreement and UCC Fixture Filing dated October 25, 2006, from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on November 20, 2006, as Document No. 0632241424 (the "7314 Madison Mortgage"), which mortgage encumbers the real property and all, improvements thereon legally described as Parcel I on Exhibit "A" hereto (the "7314 Madison Property"), and (ii) that certain

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Assignment of Rents and Leases dated October 25, 2006, from Borrower to Lender and recorded with the Recorder's Office on November 20, 2006, as Document No. 0632241425 (the "7314 Madison Assignment"), (iii) the personal Indemnity Agreement of Borrower in favor of Lender and (iv) certain other loan documents.

II: (i) that certain Junior Mortgage and Security Agreement and UCC Fixture Filing dated October 25, 2006, from Brian Sullivan and Mary T. Sullivan to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on November 20, 2006, as Document No. 0632241426 (the "605 Thomas Mortgage"), which mortgage encumbers the real property and all, improvements thereon legally described as Parcel II on Exhibit "A" hereto (the "605 Thomas Property"), and (ii) certain other loan documents.

The Note, the 7314 Madison Mortgage, and the 605 Thomas Mortgage (collectively the "Mortgages"), the Assignments described above, the Modifications described below and any other document evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. Whereas the Loan Documents were was modified by that certain First Modification of Loan Documents dated November 1, 2007 (the "First Modification"), wherein Lender extended the Maturity Date of the Loan to December 1, 2007 and that certain Second Modification of Loan Documents dated December 1, 2007 ("Second Modification") in order to extend the Maturity Date until February 29, 2008. The Loan Documents were also modified by that certain Third Modification ("Third Modification") among the parties hereto and Bridgeview Bank and Trust Company, as Trustee under Trust Agreement dated October 17, 1996 and known as Trust No. 1-2493 dated as of January 3, 2008. The Loan Documents were further modified by that certain Fourth Modification of Loan Documents dated February 28, 2008 wherein the Lender extended the Maturity Date of the Loan from February 29, 2008 until May 30, 2008.

D. The Note matures by its own terms on May 30, 2008. Borrower now desires that Lender agree to amend the Loan Documents in order to extend the Loan Maturity Date from May 30, 2008 until January 31, 2009 and Lender is willing to so extend the Maturity Date on the terms and conditions set forth 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 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 Modification, (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. **Maturity Date and Amendment of Note.** The Loan Maturity Date, as described in the Note, Mortgages and any of the other Loan Documents, is hereby amended from May 30, 2008 until January 31, 2009. The Note shall be amended and restated by that certain Fourth Amended and Restated Non-Revolving Line of Credit Note of even date herewith executed by Borrower in favor of Lender (the "Amended Note"). As of the date hereof, the Amended Note shall be substituted for and replace in its entirety the existing Note.

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2. **Reaffirmation of Obligations.** The Borrower ratifies and affirms his obligations under the terms of the Note and the Indemnity Agreement and agrees that the Note (as amended) and the Indemnity Agreement are in full force and effect following the execution and delivery of this Agreement and all related documents. The representations and warranties of Borrower in the Loan Documents are, as of the date hereof, true and correct and Borrower does not know of any default thereunder. The Loan Documents continue to be the valid and binding obligation of Borrower, enforceable in accordance with their terms and Borrower has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Loan Documents.

3. **Continuing Validity.** Except as expressly modified above, the terms of the original Mortgages shall remain unchanged and in full force and effect and are legally valid, binding, and enforceable in accordance with their respective terms. Consent by Lender to this Agreement does not waive Lender's rights to require strict performance of the Mortgages as amended above nor obligate Lender to make any future modifications. Nothing in this Agreement shall constitute a satisfaction of the promissory note or other credit agreement secured by the Mortgages. It is the intention of Lender to retain as liable all parties to the Mortgages and all parties, makers and endorsers to the Note, including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall not be released by virtue of this Agreement. If any person who signed either of the Mortgages does not sign this Agreement, then all persons signing below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing person consents to the changes and provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension or modification, but also to all such subsequent actions.

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

(a) The representations and warranties in the Note, the Mortgages, the Loan Documents and this Loan Modifications 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 Note, the Loan Modification, any of the Mortgages or the other Loan Documents and Borrower knows of no events or circumstances which with the giving of notice or passing of time, or both, would constitute an Event of Default under the the Note, any of the Mortgages 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 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 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, the Note 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. This Agreement has been duly executed and delivered on behalf of Borrower.

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5. **Title Policy.** At Lender's request, Borrower shall, at its sole cost and expense, cause Greater Illinois Title Company to issue an endorsement to Lender's Title Policy, as of the date this Agreement is recorded, reflecting the recording of this Agreement, subject only to the Permitted Exceptions set forth in the Mortgage or any other encumbrances expressly agreed to by Lender.

6. **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.

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

(d) Borrower 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 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 "Mortgages" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgages 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.

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(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 Borrower's obligations under this Agreement.

8. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives, except to the extent of any contrary provision in this Agreement. Each party intends that this Agreement, in all respects, shall be deemed and construed to have been prepared mutually by all parties, and it is expressly agreed that any uncertainty and ambiguity existing herein shall not be construed more strictly against one party or the other against the other party. If any part or any provision of this Agreement shall be determined to be invalid under any applicable law or the regulation, the remaining part of this Agreement, that can be separated from the invalid, unenforceable provisions, shall be in full force and effect.

9. **No Novation.** This Agreement shall not be deemed or construed to be a satisfaction, reinstatement, novation, or release of the Loan or of any of the other Loan Documents, or, except as expressly provided herein, nor shall it be deemed a waiver by Lender of any of the rights of Lender under the Note or any of the other Loan Documents, or at law or in equity, and shall not be construed as a repayment or novation of the Note.

10. **Counterparts.** This Agreement may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when so executed and delivered (whether by facsimile transmission or otherwise) shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

[signature page attached]

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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:

BORROWER/MORTGAGOR:

DIAMOND BANK, FSB

By: _____

Its: _____

AS as SUP
Senior Vice President

RS

BRIAN SULLIVAN

MORTGAGOR:

Mary Sullivan
MARY SULLIVAN

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Sandra Gallardo, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Chris Sebastian Senior Vice President of Diamond Bank, FSB, known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Director, 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 30 day of Sept, 2008.

[Signature]
Notary Public

My Commission Expires:

5/22/2011



STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

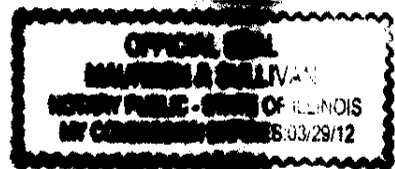
I, Margaret Sullivan, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Brian Sullivan and Mary Sullivan, known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 30 day of Sept, 2008.

[Signature]
Notary Public

My Commission Expires:

3-29-12



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EXHIBIT A LEGAL DESCRIPTION

PARCEL I:

THE WEST 1/2 OF LOT 3 IN BLOCK 3 IN CARNEY'S ADDITION TO HARLEM IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 15, 1889 IN BOOK 33 OF PLATS PAGE 43 AS DOCUMENT 1073277 IN COOK COUNTY, ILLINOIS

P.I.N. 15-13-205-004-0000

PROPERTY: 314 W. MADISON, FOREST PARK, ILLINOIS 60130

PARCEL II:

LOT 7 IN RESUBDIVISION OF LOTS 1 TO 6 BOTH INCLUSIVE IN HENRY G. FOREMAN SUBDIVISION OF BLOCK 2 IN J. D. LEHMERS SUBDIVISION OF THAT PART OF THE WEST HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER, LYING NORTH OF RIGHT OF WAY OF CHICAGO AND NORTHERN PACIFIC RAILROAD AND THAT PART OF SOUTH HALF OF THE EAST HALF OF THE NORTHWEST QUARTER LYING NORTH OF SAID RIGHT OF WAY AND EAST OF THE EASTERLY LINE OF DES PLAINES AVENUE IN SECTION 13, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. 15-13-219-017

COMMONLY KNOWN AS: 605 THOMAS AVENUE, FOREST PARK, ILLINOIS 60130