



Doc#: 1000429051 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/04/2010 12:33 PM Pg: 1 of 10

*This space reserved for Recorder's use only*

**THIRD MODIFICATION OF LOAN DOCUMENTS**

**THIS THIRD MODIFICATION OF LOAN DOCUMENTS** (this "Agreement") is made as of the 21<sup>st</sup> day of December, 2009, but is effective as October 19, 2009, 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 "Original Guarantor"), **JAMES W. KILEY REVOCABLE TRUST AGREEMENT DATED JANUARY 22, 1997**, as amended from time to time (the "Additional Guarantor"; and together with the Original Guarantor, collectively the "Guarantors") and **BANK OF AMERICA, N.A.**, a national banking association, successor by merger to 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").

01070319 LC (up)

**This document prepared by and after recording return to:**

James J. Ginsburg, Esq.  
Dykema Gossett PLLC  
10 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606

**Permanent Index Number:**

17-03-226-065-1182

**Address of Property:**

180 East Pearson, Unit 5906  
Chicago, Illinois

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

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B. The Loan is secured by, among other things, that certain 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), the First Modification (as defined below), the Second Modification (as defined below), 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 (i) a Guaranty dated April 19, 2007, from the Original Guarantor in favor of Lender (the "Original Guaranty") and (ii) a Guaranty of Payment dated September 30, 2008, from the Additional Guarantor in favor of Lender (the "Additional Guaranty"); and together with the Original Guaranty, collectively the "Guaranties").

D. The Loan Documents were modified by that certain Modification of Loan Documents dated as of May 12, 2008, by and between Borrower, Mortgagor, Original Guarantor and Lender and recorded with the Recorder's Office on May 22, 2008, as Document No. 0814331093 (the "First Modification") which, among other things, extended the maturity date (the "Maturity Date") of the Note to October 19, 2008.

E. The Loan Documents were modified by that certain Second Modification of Loan Documents dated as of September 30, 2008, by and between Borrower, Mortgagor, Guarantors and Lender and recorded with the Recorder's Office on October 31, 2008, as Document No. 0830518024 (the "Second Modification") which, among other things, extended the Maturity Date of the Note to October 19, 2009.

F. Borrower desires to further amend the Loan Documents in order to further extend the Maturity Date of the Note to January 19, 2010.

## 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 January 19, 2010. 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 January 19, 2010.

2. **Reaffirmation of Guaranties**. Guarantors ratify and affirm the Guaranty and agree that the Guaranties are in full force and effect following the execution and delivery of this Agreement. The representations and warranties of the Guarantors in the Guaranties are, as of the

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date hereof, true and correct and Guarantors do not know of any default thereunder. The Guaranties continue to be the valid and binding obligation of the Guarantors, enforceable in accordance with their terms and Guarantors have no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranties.

3. **Representations and Warranties of Borrower.** Borrower, Guarantors, 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 do 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, Guarantors, 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, Guarantors, 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, Guarantors 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.

4. **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.

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5. **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.

6. **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, Guarantors, Mortgagor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantors, 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, Guarantors, or Mortgagor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantors, 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, Guarantors, 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.

(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

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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.

7. **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:**

**BANK OF AMERICA, N.A.**, a national banking association

By: [Signature]  
Name: Juanse M. Berry  
Title: Vice President

**BORROWER:**

**DAVIS DESIGN GROUP LLC**, an Illinois limited liability company

By: [Signature]  
Name: J. W. Riley  
Title: MEMBER

**MORTGAGOR:**

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

By: [Signature]  
Name: Lynn M. Kiley  
Title: Owner

**GUARANTOR:**

[Signature]  
JAMES KILEY, individually

[Signature]  
LYNN KILEY, individually

**JAMES W. KILEY REVOCABLE TRUST AGREEMENT DATED JANUARY 22, 1997**

By: [Signature]  
Name: James W. Kiley  
Title: Trustee

Property of Cook County Clerk's Office



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STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

I Oralia Guajardo, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, \_\_\_\_\_ of Bank of America, N.A., 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 21 day of December, 2009.

Oralia Guajardo  
Notary Public

My Commission Expires: 7-1-2013

STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF Cook )

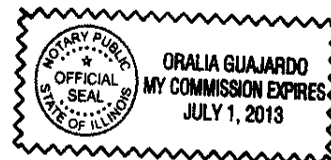


I Oralia Guajardo, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, the \_\_\_\_\_ of Davis Design Group LLC, an Illinois limited liability company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, 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 21 day of December, 2009.

Oralia Guajardo  
Notary Public

My Commission Expires: 7-1-2013



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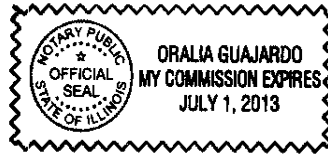
STATE OF ILLINOIS )  
 )  
 ) .ss  
COUNTY OF Cook )

I Oralia Guajardo, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, the \_\_\_\_\_ of Project #RR 107-5906 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 21 day of December, 2009.

Oralia Guajardo  
Notary Public

My Commission Expires: 7-1-2013



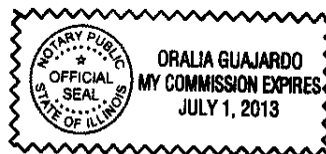
STATE OF ILLINOIS )  
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COUNTY OF Cook )

I Oralia Guajardo, 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 21 day of December, 2009.

Oralia Guajardo  
Notary Public

My Commission Expires: 7-1-2013





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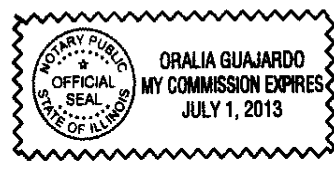
STATE OF ILLINOIS )  
 )  
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COUNTY OF Cook )

I Oralia Guajardo, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Lynn 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 21 day of December, 2009.

Oralia Guajardo  
Notary Public

My Commission Expires: 7-1-2013



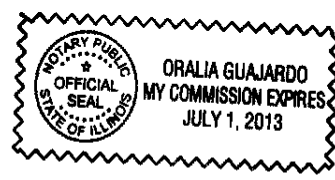
STATE OF ILLINOIS )  
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COUNTY OF Cook )

I Oralia Guajardo, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that James Kiley, the Trustee of the James W. Kiley Revocable Trust Agreement Dated January 22, 1997, 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 21 day of December, 2009.

Oralia Guajardo  
Notary Public

My Commission Expires: 7-1-2013



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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 ¼ OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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