

# UNOFFICIAL COPY



THIS DOCUMENT PREPARED BY:

Crowley & Lamb, P.C.  
350 North LaSalle Street, Suite 900  
Chicago, Illinois 60610

Doc#: 1001144057 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 01/11/2010 01:14 PM Pg: 1 of 11

AFTER RECORDING RETURN TO:

Diamond Bank, FSB  
1051 Perimeter Drive  
Schaumburg, IL 60173  
Attn: Kariam B. Braga  
Senior Vice President

This space reserved for Recorder's use only

## MODIFICATION OF LOAN DOCUMENTS

**THIS MODIFICATION OF LOAN DOCUMENTS** (this "Agreement") is made effective as of the 1<sup>st</sup> day of Novemeber, 2009, by and among **KLAD PROPERTIES LLC**, an Illinois limited liability company ("Borrower"), having an address of 1915 W. Bernice, Chicago, Illinois 60613; **KEVIN S. SULLIVAN, DANIEL A. SULLIVAN, ALICIA P. SULLIVAN and LINDA K. STORBECK** (collectively, "Guarantor"), and **DIAMOND BANK, FSB**, its successors and assigns, having an address as set forth above ("Lender").

### RECITALS:

A. Lender has heretofore made a loan (the "Loan") to Borrower in the principal amount of \$440,000.00 , as evidenced by a Promissory Note dated October 16, 2006 in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note"). Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Note.

B. The Note is secured by, among other things, (i) that certain Mortgage dated October 16, 2006 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on October 30, 2006 as Document No. 0630308113 (the "Mortgage"), which Mortgage encumbers the real property and all, improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Leases and Rents dated October 16, 2006 from Borrower to Lender and recorded with the Recorder's Office on October 30, 2006 as Document No. 0630308114 (the "Assignment of Leases"), (iii) the Guaranty Agreement (the "Guaranty") of Guarantor dated October 16, 2006, guaranteeing payment and performance of all obligations of Borrower under the Note and Loan Documents (as hereinafter defined) and (iv) certain other loan documents (the Note, the Mortgage, the Guaranty, the Assignment of Leases and any other document at any time evidencing, securing and guarantying the Loan, in their

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original form and as amended from time to time, are sometimes collectively referred to herein as the "Loan Documents").

C. The outstanding principal balance of the Loan on the date hereof is \$426,075.11.

D. The Note matures by its terms on November 1, 2009. The Borrower and Guarantor have requested that Lender extend the maturity date of the Note until February 1, 2010 and Lender is willing to extend the maturity date of the Note until February 1, 2010, on the terms and conditions more fully set forth hereinafter.

## 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 and Borrower 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 Agreement, (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. **Extension of the Maturity Date.** Lender and Borrower agree that the Maturity Date for the Loan shall hereby be amended and extended from November 1, 2009 until February 1, 2010. All references in any and all Loan Documents to "Maturity Date" or words of similar import shall now mean February 1, 2010.

2. **Amendment of the Note.** The Note shall be amended and restated by that certain Amended and Restated Promissory Note of even date herewith in the principal amount of \$426,075.11 executed by Borrower in favor of Lender (the "Amended Note"). As of the date hereof, the Amended Note restates and replaces the Note and is not a repayment or novation of the Note. All references in any and all Loan Documents to the "Note" or words of similar import shall now mean the Amended Note.

3. **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 and the Amended Note and that the Guarantor remains liable to Lender for all amounts due in connection with the Amended Note. 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.

4. **Continuing Validity.** Except as expressly modified above, the terms of the original Mortgage and the other Loan Documents 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 Mortgage (as amended above) nor obligate Lender to make any future modifications. Nothing in this Agreement shall constitute a satisfaction of the promissory notes

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or other credit agreement secured by the Mortgage. It is the intention of Lender to retain as liable all parties to the Mortgage and all parties, makers and endorsers to the Amended 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 the original Mortgage 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.

5. **Borrower and Guarantor's Releases.** Borrower and Guarantor, in consideration of the execution of this Agreement, and the performance of all terms contained herein to be performed by Lender, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, do hereby remise, release and forever discharge, and by these presents, do for their successors, assigns, heirs, administrators, executors, personal representatives, agents, grantees, and successors in interest, remise, release and forever discharge Lender and its respective successors, assigns, heirs, administrators, officers, personal representatives, attorneys, agents and successors in interest, from all actions, suits, causes of action, damages, expenses, liabilities, claims, accounts and demands, whatsoever, whether or not well-founded in fact or in law which they have, have had, or at any time may have, could have, or might have but for the execution of this Agreement, asserted against Lender, for or by reason of or in respect of any matter, cause or thing whatsoever, whether known or unknown, developed or undeveloped, past, present or future or whether permanent, continuing or otherwise, arising out of or connected with the Loan, the Amended Note, the Loan Documents or this Agreement.

6. **Representations and Warranties of Borrower and Guarantor.** Borrower and Guarantor hereby represent, covenant and warrant to Lender as follows:

- (a) The representations and warranties in the Amended Note, 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 Loan Documents) under the Amended Note, the Mortgage or the other Loan Documents and neither of the Borrowers nor Guarantor 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 Amended 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 and Guarantor 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.

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(e) As of the date hereof, neither Borrower nor Guarantor have any claims, counterclaims, defenses, or set-offs with respect to the Loan 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 and Guarantor. This Agreement has been duly executed and delivered on behalf of Borrower and Guarantor and is the legal, valid and binding obligations of Borrower and Guarantor enforceable in accordance with its terms.

7. **Title Policy.** At Lender's request, Borrower shall, at its sole cost and expense, cause the applicable title company ("Title Company") to issue an endorsement to Lender's title insurance policy (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.

8. **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.

9. **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 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 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 or Guarantor nor shall privity of contract be presumed to have been established with any third party.

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(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. In the event of any inconsistency or conflict between this Agreement and any other Loan Document, the terms, provisions and conditions contained in this Agreement shall govern and control.

(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 Amended 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 Guarantor's and Borrower's obligations under this Agreement.

**[SIGNATURE PAGE ATTACHED]**

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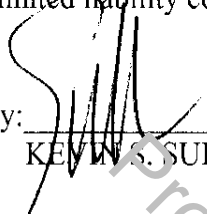
IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.


**BORROWER:**

**LENDER:**


**KLAD PROPERTIES LLC**, an Illinois limited liability company

DIAMOND BANK, FSB

By:   
\_\_\_\_\_  
KEVIN S. SULLIVAN, manager

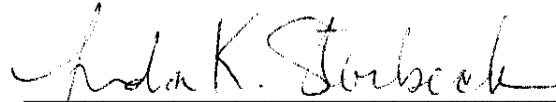
By:   
Its: Commercial Loan Officer

**GUARANTOR:**

  
\_\_\_\_\_  
KEVIN S. SULLIVAN, individually

\_\_\_\_\_  
DANIEL A. SULLIVAN, individually

\_\_\_\_\_  
ALICIA P. SULLIVAN, individually

  
\_\_\_\_\_  
LINDA K. STORBECK, individually

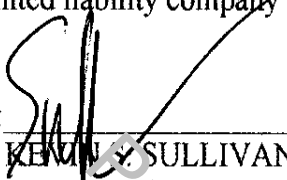
Property of Cook County Clerk's Office

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

**BORROWER:**

**KLAD PROPERTIES LLC**, an Illinois limited liability company


By:   
KEVIN S. SULLIVAN, manager


**LENDER:**


DIAMOND BANK, FSB

By:   
Its: 

**GUARANTOR:**

  
KEVIN S. SULLIVAN, individually

  
DANIEL A. SULLIVAN, individually

  
ALICIA P. SULLIVAN, individually

\_\_\_\_\_  
LINDA K. STORBECK, individually

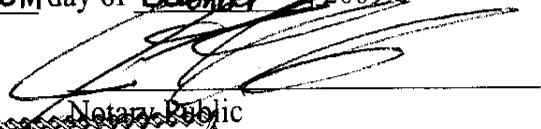
Property of Cook County Clerk's Office

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Jonathan Marciniak, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Felicia Manuillang, ~~LO president~~ of Diamond Bank, FSB, known to me to be the same person whose name is subscribed to the foregoing instrument as such LO ~~President~~, 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.

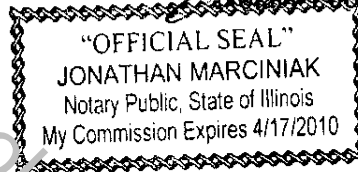
GIVEN under my hand and notarial seal this 30th day of December, 2009



Notary Public

My Commission Expires:

4/17/2010



\*\*\*\*\*

STATE OF ILLINOIS IL )  
 ) SS.  
COUNTY OF Cook )

I, Bruce Heller, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that KEVIN S. SULLIVAN, individually and as manager of KLAD PROPERTIES LLC and 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 he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of such company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29 day of December, 2009.



Notary Public

My Commission Expires:

12/05/2011



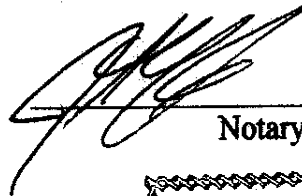


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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF Cook )

I, Jonathan Marciniak, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that DANIEL A. SULLIVAN, individually and 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, and as the free and voluntary act of such company, for the uses and purposes therein set forth.

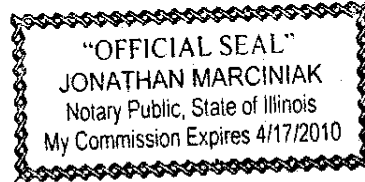
GIVEN under my hand and notarial seal this 30th day of December, 2009.



Notary Public

My Commission Expires:

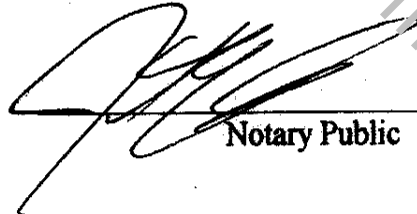
4/17/2010



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF Cook )

I, Jonathan Marciniak, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that ALICIA P. SULLIVAN, individually and 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 she signed and delivered the said instrument as her own free and voluntary act, and as the free and voluntary act of such company, for the uses and purposes therein set forth.

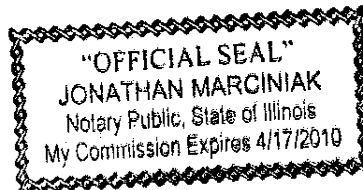
GIVEN under my hand and notarial seal this 30th day of December, 2009.



Notary Public

My Commission Expires:

4/17/2010

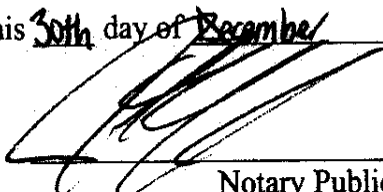


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STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF Cook        )

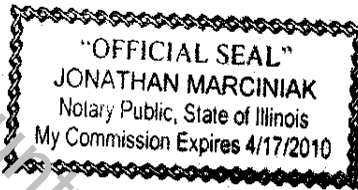
I, Jonathan Marciniak, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that LINDA K. STORBECK, individually and known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act, and as the free and voluntary act of such company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 30th day of December, 2009.

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

My Commission Expires:

4/17/2010



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## EXHIBIT A

### LEGAL DESCRIPTION

ALL OF LOT 30 AND LOT 31 (EXCEPT THE NORTH 4 FEET THEREOF) IN BLOCK 11 IN S. E. GROSS' OAK PARK SUBDIVISION IN SECTION 19, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. 16-19-105-027 AND 16-19-105-047

COMMONLY KNOWN AS: 1247 S. CLINTON, BERWYN, ILLINOIS 60402

Property of Cook County Clerk's Office