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PRESENTED & RECORDED:

08-21-2008 01:37 PM

KAREN GORDON

REGISTER OF DEEDS  
BY: SHANNON BOSTIC-GRIFFITH  
DPTY

BK: RE 2850

PG: 4259-4267

PREPARED BY AND  
UPON RECORDATION RETURN TO:

ENVELOPE

THE MILLER-HOGUE LAW FIRM, P.C.  
1130 Harding Place  
Charlotte, North Carolina 28204  
Attention: Janeen Miller-Hogue, Esq.  
704.307.4330

LOAN NO.  
400124000

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MODIFICATION AND ASSIGMENT OF REAL ESTATE DEED OF TRUST, ASSIGNMENT OF  
LEASES AND RENTS, NOTE AND RELATED LOAN DOCUMENTS

by and between

JOHN F. KELLY AND EFFIE PAPPAS KELLY,

as Prior Borrowers

JFK & EPK CLEMMONS LLC

as New Borrower/Grantor

NEWDOMINION BANK,

as Beneficiary

and

X HOLDINGS, LLC,

as Trustee

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Dated as of August 15, 2008

NO TITLE SEARCH WAS REQUESTED OR PERFORMED

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**MODIFICATION AND ASSIGNMENT OF REAL ESTATE DEED OF TRUST, ASSIGNMENT OF  
LEASES AND RENTS, NOTE AND RELATED LOAN DOCUMENTS**

This Modification and Assignment of Real Estate Deed of Trust, Assignment of Leases and Rents, Note and Related Loan Documents (this "Modification") is made and entered into as of this 15 day of August, 2008, by and between,

JOHN F. KELLY AND EFFIE PAPPAS KELLY, Husband and Wife (hereinafter referred to as "Prior Borrowers"), residing at 2119 Dilworth Road East, Charlotte, North Carolina 28203;

JFK & EPK CLEMMONS, a North Carolina limited liability company (hereinafter referred to as "New Borrower/Grantor"), having a business address of 2119 Dilworth Road East, Charlotte, North Carolina 28203;

NEWDOMINION BANK, a North Carolina banking corporation (hereinafter referred to as "Beneficiary"), having a business address of 1100 Kenilworth Avenue, Charlotte, North Carolina 28204; and

X HOLDINGS, LLC, a North Carolina limited liability company, trustee for Beneficiary of the hereinafter described Original Deed of Trust (the "Trustee"), having a business address of 1100 Kenilworth Avenue, Charlotte, North Carolina 28204.

**WHEREAS**, on or about December 18, 2007, Prior Borrowers executed a promissory note in the original principal amount of Eight Hundred Sixty-Two Thousand and 00/100 Dollars (\$862,000.00) and on or about December 26, 2007, Prior Borrowers executed a promissory note in the original principal amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (collectively referred to as the "Original Note"), payable to the order of Beneficiary, secured in part by that certain real property known as 2785 Lewisville Clemmons Road, Clemmons, Forsyth County, North Carolina as further described on the legal description as set forth on Exhibit A attached hereto and incorporated herein by reference thereto (the "Property") pursuant to a certain Real Estate Deed of Trust from Prior Borrowers to Beneficiary dated December 18, 2007, recorded in Book 2802 at Page 2208 and a certain Real Estate Deed of Trust from Prior Borrowers to Beneficiary dated December 25, 2007, recorded in Book 2804 at Page 2759; of the Forsyth County, North Carolina Register of Deeds Office (collectively referred to as the "Original Deed of Trust") and as further secured by that certain Assignment of Leases and Rents from Prior Borrowers to Beneficiary dated December 18, 2007, recorded in Book 2802 at Page 2214 of the Forsyth County, North Carolina Register of Deeds Office (the "Original Assignment of Leases and Rents") and other related loan documents to include but not be limited to a Commercial Loan Agreement, Addendum to Commercial loan Agreement, Agreement to Provide Insurance and Subordination, and Non-Disturbance and Attornment Agreement (the "Related Loan Documents");

**WHEREAS**, Prior Borrowers are simultaneously herewith deeding over to and transferring to New Borrower /Grantor the Property and as such Prior Borrowers hereby assign and transfer all of their right, title and interest in the Original Note, Original Deed of Trust, Original Assignment of Leases and Rents and Related Loan Documents (the "Loan Documents") to New Borrower /Grantor, and New Borrower/Grantor hereby assumes all of the rights, obligations (to include but not be limited to all payment and performance obligations) and duties of the Prior Borrowers under the Loan Documents and the Beneficiary, Prior Borrowers and New Borrower/Grantor hereby modify the Loan Documents to substitute and replace Prior Borrowers with the New Borrower/Grantor;

**WHEREAS**, New Borrower/Grantor hereby represents, warrants, acknowledges and agrees that it derives a direct benefit from this Modification, Prior Borrowers simultaneously herewith deeding over to and transferring to New Borrower /Grantor the Property and New Borrower/Grantor hereby simultaneously therewith assuming all of the rights, obligations (to include but not be limited to all payment and performance obligations) and duties of the Prior Borrowers under the Loan Documents covering the Property; Prior Borrowers being the sole members of New Borrower/Grantor;

**WHEREAS**, the Beneficiary would not agree to modify the Loan Documents without the New Borrower/Grantor entering into this Modification for the purposes set forth herein (capitalized terms used herein and not defined shall have the respective meanings set forth in the Loan Documents, as applicable).

**NOW THEREFORE**, intending to be legally bound and in consideration of the premises herein stated and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Prior Borrowers, New Borrower/Grantor and Beneficiary agree that, effective as of the date hereof, the Loan Documents are hereby amended as follows:

1. All of Prior Borrowers right, title and interest in the Loan Documents are hereby assigned by Prior Borrowers to New Borrower/Grantor and amended to substitute and replace Prior Borrowers with the

New Borrower/Grantor with said Loan Documents and this Modification securing the Original Note as hereby modified and New Borrower/Grantor hereby assumes all of the rights, obligations (to include but not be limited to all payment and performance obligations) and duties of the Prior Borrowers under the Loan Documents;

2. The Loan Documents are modified to incorporate the terms of this Modification, as applicable.

4. **Reaffirmation of Obligations; Modification Not to be Construed as a Novation.** The New Borrower/Grantor promises to pay the principal sums as set forth in the respective Original Note as modified herein, in accordance with the terms thereof and agrees to perform all of the requirements, conditions and obligations under the terms of the Loan Documents as hereby modified or supplemented, said documents being hereby ratified and affirmed. The execution and delivery hereof shall not constitute a novation or modification of the lien, encumbrance or security title of the respective Original Deed of Trust, Original Assignment of Leases and Rents or Original Note and said respective documents shall retain their priority as originally filed for record. New Borrower/Grantor expressly agrees that the Loan Documents are in full force and effect and that New Borrower/Grantor has no right to set-off, counterclaim or defense to the payment thereof. Except as specifically set forth herein, each of the terms and conditions under the Loan Documents are hereby reaffirmed and remain in full force and effect.

5. **Miscellaneous**

a. This Modification shall be deemed to be a contract made under, and for all purposes shall be construed in accordance with, the laws of the State of North Carolina.

b. This Modification may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Modification may be detached from any counterpart of this Modification without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Modification identical in form hereto but having attached to it one or more additional signature pages.

c. This Modification is given by the New Borrower/Grantor in consideration for Prior Borrowers simultaneously herewith deeding over to and transferring to New Borrower/Grantor the Property and for the loans and/or other financial accommodation given by Beneficiary to New Borrower/Grantor; John F. Kelly and Effie Pappas Kelly being its sole members. The New Borrower/Grantor understands and accepts that the loans and/or financial accommodation secured hereby would not have been granted or extended, but for the execution of this Modification. In the event of a default by New Borrower/Grantor under the Original Note as hereby modified, New Borrower/Grantor expressly acknowledges, covenants and agrees that Beneficiary shall have all rights and remedies under the Loan Documents, as hereby modified. The foregoing provisions are set forth and made by New Borrower/Grantor as an inducement to Beneficiary to enter into this Modification.

d. This Modification shall be binding upon and shall inure to the benefit of the parties and their heirs, executors, administrators, successors and assigns.

e. No representation or recommendation is made by Beneficiary, its members or agents (including its attorneys) as to the legal sufficiency or tax consequences of this document or the transaction to which it relates. Each party acknowledges that they have had independent legal counsel concerning the contents and legal consequences of this Modification. In the event that any party has not in fact secured such counsel they hereby acknowledge that they have been advised to do so; that by signing this Modification, they may be giving up for now and all times certain rights which they may have; that they may be creating rights and obligations of which a cause of action for money damages may be awarded; that they have been offered no inducement to execute this Modification without the benefit of counsel.

6 **Guarantors Acknowledgment and Acceptance of Modification.**

WHEREAS, Prior Borrowers have agreed to execute those certain "Irrevocable, Unconditional And Continuing Guaranty Agreements" contemporaneously with the execution of this Modification to Guaranty payment and performance of the New Borrower/ Grantor's obligations under the Loan Documents as hereby modified;

WHEREAS, Prior Borrowers acknowledge, agree and accept that the Beneficiary would not enter into this Modification without the Prior Borrowers agreement to enter into those certain "Irrevocable, Unconditional And Continuing Guaranty Agreements" and acknowledgment and acceptance of the terms

of this Modification.

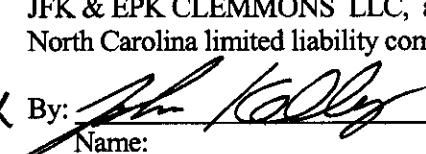
NOW, THEREFORE, in consideration of the existing amounts owing under the Original Note and as a condition precedent to Beneficiary's willingness to consent to this Modification, Guarantors hereby agree to enter into "Irrevocable, Unconditional And Continuing Guaranty Agreements" contemporaneously with the execution of this Modification Agreement to Guaranty payment of the New Borrower/ Grantor's obligations under the Loan Documents and further warrant to Beneficiary that this Modification is of value to them.

[SIGNATURES APPEAR ON NEXT PAGE]

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

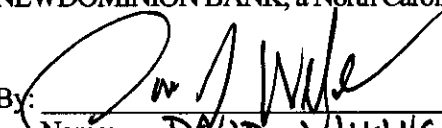
**NEW BORROWER/GRANTOR:**

JFK & EPK CLEMMONS LLC, a  
North Carolina limited liability company

X By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

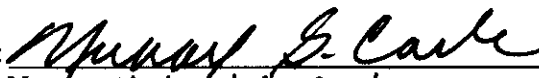
**BENEFICIARY:**

NEWDOMINION BANK, a North Carolina banking corporation


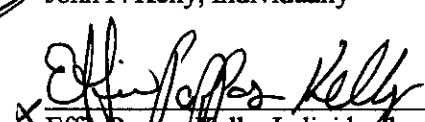
By:   
Name: DAVID WILLIAMSON  
Title: SVP

**TRUSTEE:**

X HOLDINGS, LLC, a  
North Carolina limited liability company

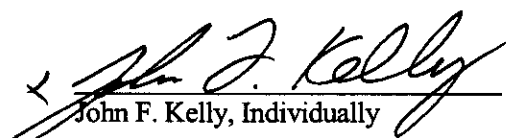

By:   
Name: Michael G. Carle  
Title: Assistant Vice President

**PRIOR BORROWERS:**

X   
John F. Kelly, Individually  
X   
Effie Pappas Kelly, Individually

Guarantors are executing this Modification to acknowledge, agree and accept and agree with the terms hereof.

**GUARANTORS:**

X   
John F. Kelly, Individually  
X   
Effie Pappas Kelly, Individually

SEAL-STAMP

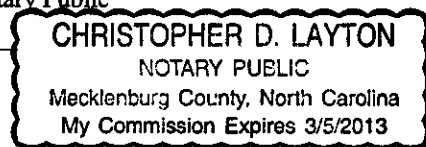
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YSTATE OF NC  
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I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that John Kelly, personally appeared before me this day and acknowledged that s/he is the Member of JFK & EPK CLEMMONS LLC, a North Carolina limited liability company, and that s/he as the Member of the limited liability company being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

Witness my hand and official stamp or seal, this 15 day of August, 2008.

My commission expires: 3-5-11

C D L Notary Public  
Printed Name: CHRISTOPHER D. LAYTON

STATE OF North Carolina  
COUNTY OF Mecklenburg

I, Theresa M. Bowles, a Notary Public of the County and State aforesaid, certify that David J. Willingham personally appeared before me this day and acknowledged that s/he is the Sr. Vice Pres. of NEWDOMINION BANK, a North Carolina banking corporation, and that s/he as the Sr. Vice Pres. of the banking corporation being authorized to do so, executed the foregoing instrument on behalf of the banking corporation.

Witness my hand and official stamp or seal, this 20 day of August, 2008.

My commission expires: 5-18-11

Theresa M. Bowles Notary Public  
Printed Name: Theresa M. Bowles

**Theresa M. Bowles**  
**Notary Public**  
**Mecklenburg Co., NC**  
**Comm. Exp. 5/18/2011**

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YSTATE OF North Carolina  
COUNTY OF Mecklenburg

I, Theresa M. Bowles, a Notary Public of the County and State aforesaid, certify that Michael G. Carle personally appeared before me this day and acknowledged that s/he is the Asst. Vice Pres. of X HOLDINGS, LLC, a North Carolina limited liability company, and that s/he as the Asst. V.P. of the limited liability company being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

Witness my hand and official stamp or seal, this 20 day of August, 2008.

My commission expires: 5-18-11

Theresa M. Bowles Notary Public  
Printed Name: Theresa M. Bowles

**Theresa M. Bowles**  
**Notary Public**  
**Mecklenburg Co., NC**  
**Comm. Exp. 5/18/2011**

SEAL-STAMP

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YSTATE OF NC  
COUNTY OF MecklenburgI, CHRISTOPHER D. LAYTON, a Notary Public of the County and State aforesaid, certify that John F. Kelly personally appeared before me this day and acknowledged the execution of the foregoing instrument.Witness my hand and official stamp or seal, this 15 day of August, 2008.My commission expires: 3/5/13CHRISTOPHER D. LAYTON Notary Public  
Printed Name: CHRISTOPHER D. LAYTONSTATE OF NC  
COUNTY OF MeckI, CHRISTOPHER D. LAYTON, a Notary Public of the County and State aforesaid, certify that Effie Pappas Kelly personally appeared before me this day and acknowledged the execution of the foregoing instrument.Witness my hand and official stamp or seal, this 15 day of August, 2008.My commission expires: 3/5/13CHRISTOPHER D. LAYTON Notary Public  
Printed Name: CHRISTOPHER D. LAYTON

CHRISTOPHER D. LAYTON  
NOTARY PUBLIC  
Mecklenburg County, North Carolina  
My Commission Expires 3/5/2013

CHRISTOPHER D. LAYTON  
NOTARY PUBLIC  
Mecklenburg County, North Carolina  
My Commission Expires 3/5/2013

The foregoing Certificate(s) of

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

\_\_\_\_\_  
COUNTY REGISTER OF DEEDS FORBy \_\_\_\_\_ Deputy/Assistant-Register of  
Deeds.

**EXHIBIT A**

**LEGAL DESCRIPTION**

(See Attached)



**ATTACHMENT**

BEING known and designated as Lot 1 as shown on the plat entitled "Starbucks" as recorded in Plat Book 50, Page 151 in the Office of the Register of Deeds of Forsyth County, North Carolina, reference to which is hereby made for a more particular description.

TOGETHER WITH, AND SUBJECT TO, the terms and provisions of that certain Reciprocal Easement Agreement with Conditions, Covenants and Restrictions recorded at Book 2520, Page 2462 in the Office of the Register of Deeds for Forsyth County, North Carolina.