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2000-10-04 13:14:47
Cook County Recorder 41.00

Prepared by and after
recording please return to:



Bank One, N.A.
200 South Wacker Street, 6th Floor, Mail Suite IL1-0951
Chicago, Illinois 60606
Attention: Kamelia Hormozian

FIRST MODIFICATION AGREEMENT

EFFECTIVE DATE: September 18, 2000.

PARTIES: "Borrower": Windings Investment, L.L.C., an Illinois limited liability company

"Bank": Bank One, N.A., a national banking association, as successor to First National Bank of Chicago, with its main office at 1 Bank One Plaza, Chicago, Illinois 60670.

RECITALS:

A. Bank has extended to Borrower credit (the "Loan") pursuant to the three Construction Loan Agreements, each dated January 21, 1999 (collectively referred to as the "Loan Agreement"), and evidenced respectively by the certain Construction Loan Note in the original principal amount of \$9,470,000.00, by the certain Revolving Construction Loan Note in the original principal amount of \$7,850,000.00, and by the certain Construction Loan Note in the original principal amount \$1,825,000.00, all dated January 21, 1999 (collectively referred to as the "Note").

B. The Loan is secured by, among other things, that certain Revolving Construction Mortgage, Security Agreement and Assignment of Leases and Rentals, dated January 21, 1999 (the "Mortgage"), by, Borrower as mortgagor, in favor of the Bank, as mortgagee, recorded on March 9, 1999 with the Recorder's Office of Cook County, Illinois, as Document No. 99225282 (the agreements, documents, and instruments securing the Loan and the Note are referred to collectively herein as the "Security Documents").

C. Bank and Borrower have executed and delivered previously the following agreements (the "Modifications") modifying the terms of the Loan, the Note, the Loan Agreement, and/or the Security Documents: First Amendment to Construction Loan Agreements dated February 19, 1999. The Note, the Loan Agreement, the Security Documents, any

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environmental indemnity agreement, and all other agreements, documents, and instruments evidencing, securing, or otherwise relating to the Loan, as modified by the Modifications, are referred to collectively herein as the "**Loan Documents.**" Hereinafter, the terms "**Note,**" "**Loan Agreement,**" "**Mortgage,**" and "**Security Documents**" shall mean such documents as modified by the Modifications.

D. Borrower has requested that Bank modify the Loan and the Loan Documents as provided in this Modification Agreement (this "**Modification Agreement**"). Bank is willing to so modify the Loan and the Loan Documents, subject to the terms and conditions set forth herein.

AGREEMENT:

For good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Borrower and Bank agree as follows:

1. ACCURACY OF RECITALS.

Borrower acknowledges the accuracy of the Recitals.

2. MODIFICATION OF LOAN DOCUMENTS.

2.1 The Note is modified as follows:

The sentence below is hereby deleted in its entirety:

"The maximum principal amount outstanding shall not exceed \$12,000,000.00 at any one time under the sum of the principal outstanding"

And replaced with the following:

"The maximum principal amount outstanding shall not exceed \$13,000,000.00 at any one time under the sum of the principal outstanding"

2.2 The Mortgage is modified as follows:

The first paragraph under the caption "WITNESSETH:" is hereby modified by increasing the total sum of indebtedness as defined to be Sixteen Million Five Hundred Thousand and No/100 Dollars (\$16,500,000.00) to Seventeen Million Five Hundred Thousand and No/100 Dollars (\$17,500,000.00).

2.3 The increase will be effective for sixty (60) days from the effective day of this Agreement. After sixty (60) days, the maximum amount and total sum shall automatically decrease to Sixteen Million Five Hundred Thousand and No/100 Dollars (\$16,500,000.00).

2.4 Each reference in the Loan Documents to any of the Loan Documents shall be a reference to such document as modified herein.

3. **RATIFICATION OF LOAN DOCUMENTS AND COLLATERAL.**

The Loan Documents are ratified and affirmed by Borrower and shall remain in full force and effect as modified herein. Any property or rights to or interests in property granted as security in the Loan Documents, as amended hereby, shall remain as security for the Loan and the obligations of Borrower in the Loan Documents.

4. **BORROWER REPRESENTATIONS AND WARRANTIES.**

Borrower represents and warrants to Bank that:

4.1 No default or event of default has occurred and is continuing under any of the Loan Documents as modified herein, nor any event, that, with the giving of notice or the passage of time or both, would be a default or an event of default under any of the Loan Documents as modified herein has occurred and is continuing.

4.2 There has been no material adverse change in the financial condition or results from operations of Borrower or any other person whose financial statement has been delivered to Bank in connection with the Loan from the most recent financial statement received by Bank, and there has been no casualty, loss or material deterioration in the condition or value of any collateral security for the Loan.

4.3 Each of the representations and warranties in the Loan Documents is true and accurate as if made on the date hereof.

4.4 Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

4.5 The Loan Documents as modified herein are the legal, valid, and binding obligation of Borrower, enforceable against Borrower in accordance with their terms.

4.6 Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Modification Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Modification 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 Modification Agreement has been duly executed and delivered on behalf of Borrower.

5. **BORROWER COVENANTS.**

Borrower covenants and agrees with Bank that:

5.1 Borrower shall execute, deliver, and provide to Bank, and shall cause to be executed, delivered and provided to Bank, such additional agreements, documents, instruments and resolutions as are reasonably required at any time by Bank.

5.2 Contemporaneously with the execution and delivery of this Modification Agreement, Borrower shall pay or cause to be paid to Bank:

5.2.1 All the internal and external costs and expenses incurred by Bank in connection with this Modification Agreement (including, without limitation, inside and outside attorneys, appraisal, appraisal review, processing, title, filing, and recording costs, expenses, and fees).

5.3 Contemporaneously with the execution and delivery of this Modification Agreement, Borrower shall cause to be delivered to Bank, at Borrower's sole cost and expense, an updated endorsement in form and substance satisfactory to the Bank to the title insurance policy insuring the Mortgage, which policy is policy number 007795913 D2, effective dated extended to July 11, 2000, issued by Chicago Title Insurance Company. Such endorsement recognizes the modification of the Loan Documents herein and is subject only to the exceptions contained in Schedule B, Part I, of such policy.

6. EXECUTION AND DELIVERY OF MODIFICATION AGREEMENT BY BANK.

Bank shall not be bound by this Modification Agreement until (i) Bank has executed and delivered this Modification Agreement, and (ii) Borrower has performed all of the obligations of Borrower under this Modification Agreement to be performed contemporaneously with the execution and delivery of this Modification Agreement.

7. INTEGRATION, ENTIRE AGREEMENT, CHANGE, DISCHARGE, TERMINATION, OR WAIVER.

The Loan Documents as modified herein contain the complete understanding and agreement of Borrower and Bank in respect of the Loan and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations. No provision of the Loan Documents as modified herein may be changed, discharged, supplemented, terminated, or waived except in a writing signed by the parties thereto.

8. BINDING EFFECT.

The Loan Documents as modified herein shall be binding upon and shall inure to the benefit of Borrower and Bank and their respective successors and assigns and the executors, legal administrators, personal representatives, heirs, devisees, and beneficiaries of Borrower, provided, however, Borrower may not assign any of its rights or delegate any of its obligations under the Loan Documents and any purported assignment or delegation shall be void.

9. CHOICE OF LAW.

This Modification Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to conflicts of law principles.

10. COUNTERPART EXECUTION.

This Modification Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Modification Agreement to physically form one document.

Executed on September 18, 2000, but with effect as of the Effective Date.

BANK ONE, N.A., a national banking association, as successor to First National Bank of Chicago

By: Michael F. Moore
Title: FIRST Vice President

WINDINGS INVESTMENT, L.L.C.
an Illinois limited liability company

By: M/S L.L.C., an Illinois limited liability company
Its: Manager/Member

By: [Signature]
Title: Manager

By: GES, LLC, a Delaware limited liability company
Its: Manager/Member

By: [Signature]
Title: MANAGER

By: [Signature]
Its: Manager/Member

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STATE OF ILLINOIS)
)SS:
COUNTY OF DuPAGE)

I, the Undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY**, that the foregoing instrument was duly acknowledged before me on SEPT 20, 2000, by MICHAEL F. MOONE, as FIRST V.P. of Bank One, N.A., a national banking association on behalf of the national banking association.

In Witness Whereof, I have hereunto set my hand and seal the day and year before written.

Jeanne M. Matula
Notary Public

My Commission Expires: ___/___/___



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STATE OF ILLINOIS)
)SS:
COUNTY OF DuPage)

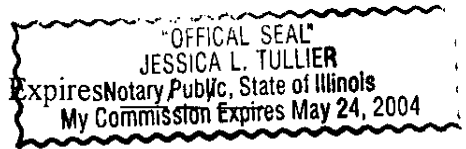
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I, Jessica Tullier, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY**, that the foregoing instrument was acknowledged before me on Sept. 20, 2000, by Henry S. Stillwell, as Manager of M/S L.L.C., an Illinois limited liability company, on behalf of the limited liability company.

In Witness Whereof, I have hereunto set my hand and seal the day and year before written.

Jessica L. Tullier
Notary Public

My Commission Expires



STATE OF ILLINOIS)
)SS:
COUNTY OF DuPage)

I, Jessica Tullier, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY**, that the foregoing instrument was acknowledged before me on Sept. 20, 2000, by Frank Gironda, as Manager of GES, LLC, a Delaware limited liability company, on behalf of the limited liability company.

In Witness Whereof, I have hereunto set my hand and seal the day and year before written.

Jessica L. Tullier
Notary Public

My Commission Expires



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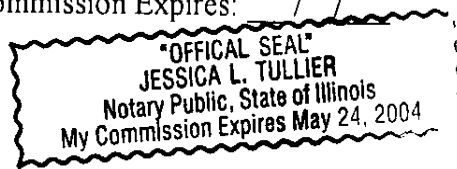
STATE OF ILLINOIS)
COUNTY OF DuPage)SS:

I, Jessica Tullier, a Notary Public, in and for the County and State aforesaid,
DO HEREBY CERTIFY, that the foregoing instrument was acknowledged before me on Sept. 20, 2000, by David Faganet, as Manager/Member of the limited liability company.

In Witness Whereof, I have hereunto set my hand and seal the day and year before written.

Jessica L. Tullier
Notary Public

My Commission Expires: 1/1



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CONSENT AND AGREEMENT OF GUARANTOR(S)

With respect to the Modification Agreement, dated as of September 18, 2000 (the "**Agreement**"), between Windings Investment, L.L.C. (the "**Borrower**") and First National Bank of Chicago, a national banking association with its principal office in Chicago, Illinois, (the "**Bank**"), the undersigned (individually and, if more than one, collectively the "**Guarantor**") agrees for the benefit of Bank as follows:


1. Guarantor acknowledges (i) receiving a copy of and reading the Agreement, (ii) the accuracy of the Recitals in the Agreement, and (iii) the continuing effectiveness of (A) the Limited Guaranty, dated January 21, 1999 (the "**Guaranty**"), by the undersigned for the benefit of Bank, as modified herein, and (B) any other agreements, documents, or instruments securing or otherwise relating to the Guaranty, (including, without limitation, any environmental indemnity agreement previously executed and delivered by the undersigned), as modified herein. The Guaranty and such other agreements, documents, and instruments, as modified herein, are referred to collectively herein as the "**Guarantor Documents**." Terms used herein with their initial letters capitalized are used as defined in the Agreement, except as such terms may be otherwise expressly defined herein.
2. Guarantor consents to the modification of the Loan Documents and all other matters in the Agreement.
3. Guarantor fully, finally, and forever releases and discharges Bank and its successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits of whatever kind or nature, in law or equity, that Guarantor has or in the future may have, whether known or unknown, (i) in respect of the Loan, the Loan Documents, the Guarantor Documents, or the actions or omissions of Bank in respect of the Loan, the Loan Documents, or the Guarantor Documents and (ii) arising from events occurring prior to or contemporaneously with the date hereof.
4. Guarantor agrees that all references, if any, to the Note, the Loan Agreement, the Mortgage, the Security Documents, and the Loan Documents in the Guarantor Documents shall be deemed to refer to such agreements, documents, and instruments as modified by the Agreement.
5. Guarantor reaffirms the Guarantor Documents and agrees that the Guarantor Documents continue in full force and effect and remain unchanged, except as specifically modified by this Consent and Agreement of Guarantor(s). Any property or rights to or interests in property granted as security in the Guarantor Documents shall remain as security for the Guaranty and the obligations of Guarantor in the Guaranty.
6. Guarantor agrees that the Loan Documents, as modified by the Agreement, and the Guarantor Documents, as modified by this Consent and Agreement of Guarantor(s), are the legal, valid, and binding obligations of Borrower and the undersigned, respectively, enforceable in accordance with their terms against Borrower and the undersigned, respectively.

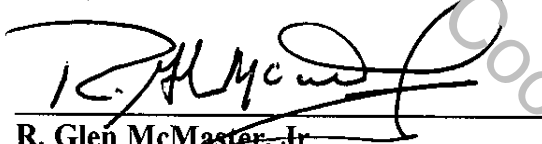
7. Guarantor agrees that Guarantor has no claims, counterclaims, defenses, or offsets with respect to the enforcement against Guarantor of the Guarantor Documents.

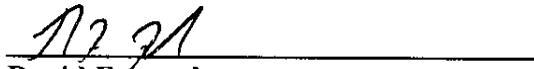
8. Guarantor represents and warrants that there has been no material adverse change in the financial condition or results from operations of any Guarantor from the most recent financial statement received by Bank.

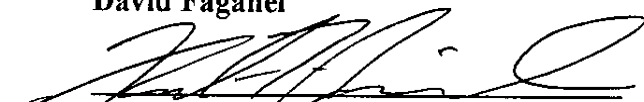
9. Guarantor agrees that this Consent and Agreement of Guarantor(s) may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature and acknowledgement pages may be detached from the counterparts and attached to a single copy of this Consent and Agreement of Guarantor(s) to physically form one document.

DATED as of the Effective Date of the Agreement.

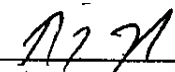

Henry S. Stillwell, III

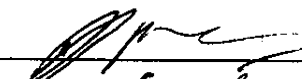

R. Glen McMaster, Jr.


David Faganel


Frank F. Gironda

R.A. Faganel Builders, Inc., an Illinois corporation

By: 
Its: Executive Vice President

By: 
Its: Secretary

STREET ADDRESS: *Walt Lead & 191st St, W. Hwy 5*
CITY:
TAX NUMBER: 23-06-300-003-0000
23-06-300-004-0000

COUNTY: COOK
23-06-301-001-0000
23-06-301-002-0000
23-06-301-003-0000

23-06-400-001-0000
23-06-400-002-0000

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LEGAL DESCRIPTION: LOTS 1 THROUGH 46, BOTH INCLUSIVE, AND 54 THROUGH 63, BOTH INCLUSIVE, AND OUTLOTS A AND B IN THE WINDINGS OF WILLOW RIDGE, A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER ~, IN COOK COUNTY, ILLINOIS.

NOTE: THE LAND IS ALSO DESCRIBED AS:

PARCEL 1:

LOT 6 AND THAT PART OF LOTS 4, 5, 9, 10 AND 11 IN CARRINGTONS SUBDIVISION OF THE NORTH FRACTIONAL SOUTH 1/2 OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE PRESENT NORTHERLY PROPERTY LINE OF THE ATCHINSON, TOPEKA AND SANTA FE RAILWAY COMPANY WHICH IS 50 FEET NORTHERLY OF MEASURED NORMALLY FROM THE CENTER LINE OF SAID RAILWAY COMPANY'S ORIGINAL NOW EAST BOUND MAIN TRACK AT MILE POST 18 PLUS 3959.4 FEET; THENCE SOUTHWESTERLY DEFLECTING BY A TANGENT ANGLE OF 4 DEGREES 45 MINUTES TO THE RIGHT FROM SAID PRESENT PROPERTY LINE A DISTANCE OF 681 FEET; THENCE CONTINUING SOUTHWESTERLY ALONG A CURVED LINE CONCAVE TO THE RIGHT HAVING A RADIUS OF 3769.83 FEET, A DISTANCE OF 1431 FEET TO A POINT WHICH IS 17 FEET NORTHERLY OF MEASURED AT RIGHT ANGLES TO THE PRESENT NORTHERLY PROPERTY LINE OF SAID RAILWAY COMPANY AT MILE POST 19 PLUS 0827.3 FEET; THENCE WESTERLY ALONG A LINE 50 FEET NORTHERLY OF NORMALLY DISTANT FROM AND PARALLEL TO THE CENTER LINE OF SAID RAILWAY COMPANY'S EAST BOUND MAIN TRACK TO A POINT WHICH IS 50 FEET NORTHERLY OF MEASURED AT RIGHT ANGLES TO SAID CENTER LINE AT MILE POST 19 PLUS 1966.5 FEET, THENCE SOUTHERLY 17.1 FEET TO A POINT IN THE PRESENT NORTHERLY PROPERTY LINE OF SAID RAILWAY COMPANY, SAID POINT BEING 33 FEET NORTHERLY OF MEASURED AT RIGHT ANGLES TO SAID CENTER LINE OF EAST BOUND MAIN TRACK AT MILE POST 19 PLUS 1968.7 FEET

(EXCEPT THAT PART OF SAID LOT 4 LYING NORTH OF A LINE 33 FEET SOUTH OF AND PARALLEL TO THE EAST AND WEST QUARTER LINE OF SAID SECTION 6

AND ALSO EXCEPT THAT PART OF SAID LOT 9 BOUNDED BY A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 9; THENCE EAST ALONG NORTH LINE THEREOF 172.22 FEET; THENCE SOUTHWESTERLY 205.36 FEET TO A POINT IN THE WEST LINE OF SAID LOT 9 WHICH IS 111.13 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 9; THENCE NORTH ALONG WEST LINE OF SAID LOT 9 TO PLACE OF BEGINNING), I COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF LOT 3 IN CARRINGTONS SUBDIVISION OF THE NORTH FRACTIONAL SOUTH 1/2 OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF A LINE 33 FEET SOUTH OF AND PARALLEL TO THE EAST AND WEST QUARTER LINE OF SAID SECTION 6 AND LYING NORTHWESTERLY OF THE NORTHWESTERLY LINE OF THE RIGHT OF WAY AND LANDS OF THE ATCHINSON, TOPEKA AND SANTA FE RAILWAY CO, AS

CONVEYED TO SAID RAILROAD BY WARRANTY DEED RECORDED FEBRUARY 24, 1943 AS DOCUMENT NUMBER 13634610, IN COOK COUNTY, ILLINOIS.