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Prepared by and after
recording, return to:
DLA Piper LLP (US)
203 North LaSalle Street
Suite 1900
Chicago, Illinois 60601
Attn: Alison M. Mitchell



Doc#: 1027416049 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/01/2010 02:07 PM Pg: 1 of 10

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2005-437613A
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MODIFICATION OF MORTGAGE AND OTHER LOAN DOCUMENTS

THIS MODIFICATION OF MORTGAGE AND OTHER LOAN DOCUMENTS (this "Agreement") is made as of the 23rd day of September, 2010, by and among SMIII 150/200 MARTINGALE ROAD, LLC, a Delaware limited liability company ("Borrower") and MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation ("Lender").

RECITALS

A. Lender made a loan to Borrower (the "Loan") in the original stated principal amount of up to Forty Six Million Three Hundred Fifteen Thousand and no/100 Dollars (\$46,315,000.00). The Loan is evidenced by a Note dated as of September 13, 2005 (the "Note") executed by Borrower made payable to Lender in the original amount of the Loan.

B. The Loan is secured by (i) a Mortgage and Security Agreement and Fixture Filing with Assignment of Leases and Rents (the "Mortgage") dated as of September 13, 2005, executed by Borrower for the benefit of Lender and recorded on September 14, 2005, with the Recorder of Cook County, Illinois as Document No. 0525710115, which Mortgage encumbers the real property legally described on attached Exhibit A (the "Premises"); (ii) an Environmental Indemnity Agreement dated September 13, 2005 executed by Borrower in favor of Lender ("Environmental Indemnity"); and (iii) certain other loan documents (the Note, Mortgage, First Amendment (as defined below), Environmental Indemnity and the other documents evidencing securing and guarantying the Loan, in their original form and as amended from time to time, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan was modified by that certain Reserve Agreement and Modification of Mortgage and Other Loan Documents dated as of March 4, 2010 (the "First Amendment").

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D. Borrower has requested that Lender permit Borrower to extend the Maturity Date of the Loan in accordance with the terms of the Note and Lender has agreed to permit such extension subject to the terms and conditions herein provided.

NOW, THEREFORE, in consideration of the Recitals set forth above, the agreements by Lender to modify the Loan Documents, as provided herein, the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

1. **Affirmation of Recitals**. The recitals set forth above are true and correct and are incorporated herein by this reference.
2. **Definitions**. Capitalized terms used but not defined in this Agreement shall have the meanings ascribed to such terms in the Mortgage.
3. **Outstanding Principal Balance**. On even date herewith, the outstanding principal balance of the Loan is \$44,600,000.00.
4. **Maturity Date**. In accordance with Section 24 of the Note, Borrower has elected (its first of three options) to extend the Maturity Date of the Note and Lender has consented to such extension. Accordingly, the "Maturity Date" is hereby extended until October 1, 2011 and therefore, all reference in the Note, Mortgage and other Loan Documents to the Maturity Date shall mean October 1, 2011.
5. **Contract Rate**. The Contract Rate shall, from and after October 1, 2011, be adjusted as provided in Sections 24 and 25 of the Note (and the other terms and provisions of Sections 24 and 25 of the Note applicable after such extension shall be in full force and effect).
6. **Representations and Warranties of Borrower**. Borrower hereby represents, covenants and warrants to Lender as follows:
 - (a) There is currently no Event of Default under the Note, the Mortgage or the other Loan Documents and Borrower does not have knowledge of any event or circumstance which with the giving of notice or the passage of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.
 - (b) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, the Loan Documents continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by bankruptcy, insolvency, other debtor relief laws and general principles of equity.
 - (c) There has been no material adverse change in the financial condition of Borrower from the date of the most recent financial statement received by Lender.
 - (d) As of the date hereof, Borrower has no claims, counterclaims, defenses or set-offs with respect to the Loan or the Loan Documents as modified herein.

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(e) Borrower validly exists under the laws of the State of its 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 by Borrower and the performance by Borrower 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.

7. **Loan Fees and Expenses.** As a condition precedent to Lender's agreement to enter into this Agreement, Borrower has paid to Lender a servicing fee in an amount equal to \$111,500 and hereby agrees to pay, promptly upon request therefor, all reasonable out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees and reasonable attorney's fees and expenses.

8. **Release of Claims.** Borrower and any other obligors, on behalf of themselves and their respective successors and assigns (collectively and individually, "**Borrower Parties**"), hereby fully, finally and completely RELEASE AND FOREVER DISCHARGE Lender and its successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, servicers, attorneys, agents and properties, past, present and future, and their respective heirs, successors and assigns (collectively and individually, "**Lender Parties**"), of and from any and all claims, controversies, disputes, liabilities obligations, demands, damages, debts, liens, actions and causes of action of any and every nature whatsoever, known or unknown, whether at law, by statute or in equity, in contract or in tort, under state or federal jurisdiction, and whether or not the economic effects of such alleged matters arise or are discovered in the future, which Borrower Parties have as of the date of this Agreement or may claim to have against Lender Parties arising out of or with respect to any and all transactions relating to the Loan or the Loan Documents occurring on or before the date of this Agreement, including any loss, cost or damage of any kind or character arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of Lender Parties occurring on or before the date of this Agreement. The foregoing release is intended to be, and is, a full, complete and general release in favor of Lender Parties with respect to all claims, demands, actions, causes of action and other matters described therein, including specifically, without limitation, any claims, demands or causes of action based upon allegations of breach of fiduciary duty, breach of any alleged duty of fair dealing in good faith, economic coercion, usury, or any other theory, cause of action, occurrence, matter or thing which might result in liability upon Lender Parties arising or occurring on or before the date of this Agreement. Borrower Parties understand and agree that the foregoing general release is in consideration for the agreements of Lender contained herein and that they will receive no further consideration for such release.

9. **Miscellaneous.**

(a) A default hereunder shall be deemed to be an "Event of Default" hereunder if such default has not been cured within five (5) Business Days after Lender notifies Borrower in writing that such a default exists and accordingly, any such Event of Default shall be an Event of Default under Section 4.01(c) of the Mortgage entitling Lender to all of the remedies afforded Lender in Section 4.02 of the Mortgage.

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- (b) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to its conflict of law principles.
- (c) 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 to the preparation of this Agreement, and Borrower and Lender each acknowledge and waive any claim contesting the existence and adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represent 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. Borrower and Lender 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.
- (d) The execution of this Agreement by Lender 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.
- (e) Borrower and Lender acknowledge that there are no other understandings, agreements or representations, either oral or written, express or implied, with respect to the Loan 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 with respect to the Loan; 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.
- (f) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.
- (g) 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. This Agreement shall be deemed a "Loan Document" and accordingly, the definition of the term "Loan Documents" appearing in the Loan Documents is hereby amended to include, in addition to the documents already covered thereby, this Agreement. The paragraph and section heading 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.
- (h) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

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(i) Time is of the essence of each of Borrower's obligations under this Agreement.

(j) All of the Premises shall remain in all respects subject to the lien, charge and encumbrance of the Mortgage and the other Loan Documents, and, nothing herein contained and nothing done pursuant hereto shall affect the lien, charge or encumbrance of the Mortgage or the priority thereof with respect to other liens, charges, encumbrances or conveyances, or release or affect the liability of any party or parties whomsoever who may now or hereafter be liable under or on account of the Loan Documents.

[signature page to follow]

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

BORROWER:

SMIII 150/200 MARTINGALE ROAD, LLC, a
Delaware limited liability company

By: _____

Name: Charles J. Schreiber, Jr.

Title: Manager

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LENDER:

**MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY**, a Massachusetts
corporation

By: Cornerstone Real Estate Advisers LLC, its
Authorized Agent

By: 
Name: **David Colangelo**
Its: **Managing Director**

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BORROWER'S ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) SS
COUNTY OF Orange)

On September 7, 2010, Charles J. Schreiber, Jr. before me, K. Godin, Notary Public, personally appeared, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/het/their authorized capacity(ies), and that by his/het/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

K. Godin (Seal)
Signature



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LENDER'S ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS)
)
COUNTY OF HAMPDEN)

I, Andrea B. Oddi, a Notary Public, in and for the County and State aforesaid,
DO HEREBY CERTIFY that DAVID Colangelo, as Managing Director of Cornerstone
Real Estate Advisers LLC, the Authorized Agent of Massachusetts Mutual Life Insurance
Company, a Massachusetts corporation, 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 to me that he/she, being thereunto duly authorized, signed and delivered said
instrument as the free and voluntary act of said corporation and as his/her own free and voluntary
act, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 23rd day of September, 2010.



Notary Public

My Commission expires:

ANDREA B. ODDI
NOTARY PUBLIC
MY COMMISSION EXPIRES DEC. 31, 2010

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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOT 1 IN WOODFIELD CORPORATE CENTER RESUBDIVISION, BEING A RESUBDIVISION OF LOTS 2, 3 AND 4 IN PRUDENTIAL'S RESUBDIVISION OF LOT 4 IN WOODFIELD CORPORATE CENTER, BEING A SUBDIVISION IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 13 AND THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

PARCEL 2:

TOGETHER WITH THOSE EASEMENT RIGHTS FOR USE OF THE COMMON AREAS AND THE STORM WATER DETENTION FACILITY APPURTENANT TO THE ABOVE-DESCRIBED PROPERTY AND SUBJECT TO THE BURDENS SET FORTH IN THAT CERTAIN DECLARATION OF PROTECTIVE COVENANTS FOR WOODFIELD CORPORATE CENTER RECORDED OCTOBER 4, 1978 AS DOCUMENT NO. 24 657 502 WITH THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS, AS AMENDED BY THAT CERTAIN FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS FOR WOODFIELD CORPORATE CENTER RECORDED MAY 22, 1998 AS DOCUMENT NO. 98429887 WITH THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS, AS AMENDED BY THE CERTAIN DECLARATION OF EASEMENT AND SECOND AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS FOR WOODFIELD CORPORATE CENTER RECORDED MAY 22, 1998 AS DOCUMENT NO. 98429888 WITH THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS.

PARCEL 3:

TOGETHER WITH THOSE EASEMENT RIGHTS FOR THE USE OF THE ACCESS EASEMENT AND PARKING EASEMENT APPURTENANT TO THE ABOVE DESCRIBED PROPERTY AND SUBJECT TO THE BURDENS SET FORTH IN THAT CERTAIN DECLARATION OF RECIPROCAL PARKING AND ACCESS EASEMENT FOR 150/200 AND 300 WOODFIELD CORPORATE CENTER DATED SEPTEMBER 13, 2005 BY SMIII 150/200 MARTINGALE ROAD, LLC AND WOODFIELD REALTY HOLDING COMPANY, LLC TO BE RECORDED WITH THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS PRIOR TO THIS MORTGAGE.

Permanent Index No.: 07-24-201-017

Address: 150 & 200 Martingale Road
Schaumburg, Illinois