

UNOFFICIAL COPY



Doc#: 1122010042 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/08/2011 12:52 PM Pg: 1 of 10

JAZ DB
CT1

This document prepared by
and after recording return to:

Dykema Gossett PLLC
10 South Wacker Drive
Suite 2300
Chicago, Illinois 60606
Attn: Sharon S. Zaban, Esq.

This space reserved for Recorder's use only

Property

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is dated as of August 1, 2011 but is effective as of December 1, 2010, by and among **1-15 E. SUPERIOR, LLC**, an Illinois limited liability company ("Borrower"), **NICHOLAS A. KARRIS** ("Guarantor"), and **THE NORTHERN TRUST BANK COMPANY**, an Illinois banking corporation, its successors and assigns ("Lender").

(all)
7452367

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the original stated principal amount of Seven Million Six Hundred Eighty Thousand and 00/100 Dollars (\$7,680,000.00). The Loan is evidenced by (i) a certain Term Note dated as of December 1, 2008 made by Borrower and payable to the order of Lender in the original principal amount of Four Million and 00/100 Dollars (\$4,000,000.00) (as amended, restated or replaced from time to time, the "Original Term Note"), and (ii) a certain Revolving Line of Credit Note dated as of December 1, 2008 made by Borrower and payable to the order of Lender in the original principal amount of Three Million Six Hundred Eighty Thousand and 00/100 Dollars (\$3,680,000.00) (as amended, restated or replaced from time to time, the "Revolving Note" and, together with the Original Term Note, the "Notes").

B. The Loan is secured by, among other things, (i) that Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of December 1, 2008 from Borrower to Lender and filed and recorded in the Office of the Cook County, Illinois Recorder of Deeds (the "Recorder's Office") on December 8, 2008 as Document No. 0834333063 (as amended, restated or replaced from time to time, the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A attached hereto (the "Project"), (ii) that certain Assignment of Leases and Rents dated as of December 1, 2008, from Borrower to Lender and recorded in the Recorder's Office on December 8, 2008 as Document No. 0834333064 (as amended, restated or replaced from time to time, the "Assignment of Rents"), (iii) that certain Environmental Indemnity Agreement dated as of December 1, 2008 made by Borrower and Guarantor in favor of Lender (as amended, restated or replaced from time to time, the "Environmental Indemnity Agreement"), and (iv) certain other loan documents (the Notes, the Mortgage, the Assignment of Rents, the Environmental Indemnity Agreement and the other documents evidencing, securing and

UNOFFICIAL COPY

guarantying the Loan, in their original form and as amended, restated or replaced from time to time, are sometimes collectively referred to herein as the "Loan Documents"). All capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Loan Agreement.

C. The Loan is further secured by that certain Guaranty of Payment dated as of December 1, 2008 from Guarantor to Lender (the "Guaranty").

D. As of the date hereof, \$3,789,524.80 of the principal amount of the Original Term Note remains outstanding and the Term Note matures on December 1, 2011. As of the date hereof \$3,320,000.00 of the principal amount of the Revolving Note remains outstanding and the Revolving Note matured on December 1, 2010.

E. Borrower desires to amend the Loan Documents in order to, among other things, (i) reduce the stated principal amount of the Revolving Note to \$3,120,000.00, (ii) extend the maturity date of the Original Term Note from December 1, 2011 to December 1, 2016, (iii) extend the maturity date of the Revolving Note from December 1, 2010 to December 1, 2012, (iv) amend the principal payment amount under the Original Term Note, and (v) amend the interest rate due under the Notes, all as more particularly described herein.

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. **Incorporation of Recitals.** The aforesaid Recitals are hereby incorporated into this Agreement as if fully set forth in this Section 1.

2. **Principal Paydown and Closing Interest.** On the effective date of this Agreement and as a condition precedent to the effectiveness of this Agreement, Borrower hereby agrees to repay \$500,000.00 of the principal amount of the Revolving Note (the "Revolving Note Principal Paydown Amount"). From and after the effective date of this Agreement, being the date on which the conditions described in Section 9 of this Agreement are satisfied, the stated principal amount of the Revolving Note shall be \$3,120,000.00. In no event shall the outstanding principal amount of the Revolving Note at any time exceed \$3,120,000.00.

UNOFFICIAL COPY

3. **Amendment and Restatement of the Original Term Note.** Concurrently with the execution and delivery of this Agreement, Borrower shall execute and deliver to Lender that certain Amended and Restated Term Note of even date herewith in the stated principal amount of Three Million Seven Hundred Eighty-Nine Thousand Five Hundred Twenty Four and 80/100 Dollars (\$3,789,524.80) from Borrower and payable to the order of Lender (the "Amended Term Note"). All references in the Revolving Note, the Mortgage and each of the other Loan Documents to the "Term Note" and be deemed to refer to the Amended Term Note. The Original Term Note as so amended, restated and superceded is referred to herein as the "Term Note".

4. **Amendments to Revolving Note.**

(a) The "Scheduled Maturity Date" of the Revolving Note is hereby extended from December 1, 2010 to December 1, 2012. Any reference in the Revolving Note or any other Loan Document to the "Scheduled Maturity Date" shall mean December 1, 2012.

(b) From and after the date hereof, Paragraph 3(a)(ii) of the Revolving Note is amended by providing that the "LIBOR Margin" means two and one-half percent (2.50%). Any and all references to the LIBOR Margin under the Revolving Note or any other Loan Documents shall mean two and one-half percent (2.50%).

5. **Reaffirmation of Guaranty.** Guarantor hereby agrees that the Guaranty is hereby amended by revising all references to the Original Term Note to refer to the Amended Term Note. Guarantor hereby ratifies and affirms the Guaranty, as amended hereby, and agrees that the Guaranty, as amended hereby, is in full force and effect following the execution and delivery of this Agreement. 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, as amended hereby, continues to be the valid and binding obligations 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 therein provided.

6. **Extension Fee.** Concurrently with the execution and delivery of this Agreement and as a condition precedent to the effectiveness of the agreements contained herein, Borrower shall pay to Lender a non-refundable extension fee in the amount of \$9,474.00 for the Term Note and \$7,800.00 for the Revolving Note (together, the "Extension Fee"), which aggregate amount equals one-quarter of one percent (0.25%) of the outstanding principal balance of the Loan. Borrower hereby acknowledges and agrees that the Extension Fee has been fully earned by Lender.

7. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties contained in the Loan Documents are true, complete and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Notes, the Mortgage or any of the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or

UNOFFICIAL COPY

both, would constitute an Event of Default under the Notes, the Mortgage or any of 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 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.

(e) 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 by this Agreement.

(f) 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 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. This Agreement has been duly executed and delivered on behalf of Borrower.

8. **Required Deliveries.** The modifications to the terms and conditions of the Loan and the Loan Documents as set forth in this Agreement shall not be effective until delivery to Lender of the following documents or other items:

(a) Borrower and Guarantor have executed and delivered to Lender this Agreement.

(b) Borrower has executed and delivered to Lender the Amended Term Note.

(c) Borrower has paid to Lender the Revolving Note Principal Paydown Amount due under Paragraph 2 hereinabove.

(d) Borrower has delivered to Lender resolutions from Borrower authorizing the execution and deliver of this Agreement and the provisions contained herein, together with such other organizational documents of the Borrower as Lender may reasonably require.

(e) Borrower has caused Chicago Title Insurance Company (the "Title Company") to issue an endorsement to Lender's Loan Policy of Title Insurance Policy No. 8452367 (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 subject Mortgage, 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.

(f) Borrower has delivered to Lender such additional documents as Lender reasonably may require.

UNOFFICIAL COPY

The failure by Borrower and Guarantor to deliver the aforementioned documents and items to Lender on or before _____, 2011 shall, at the option of Lender result in this Agreement (including all agreements of Lender contained herein) being null and void and of no force and effect. The execution and delivery to Borrower of this Agreement by Lender shall be deemed to constitute Lender's satisfaction or waiver of all of the conditions precedent set forth above.

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

(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.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) All references to the "Term Note", the "Revolving Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Term Note, the Revolving 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

UNOFFICIAL COPY

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 Guarantor's obligations under this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]**

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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

LENDER:

THE NORTHERN TRUST COMPANY, an Illinois banking corporation

By: *Jon Hernandez*
Its: *VP President*

BORROWER:

1-15 E. SUPERIOR, LLC, an Illinois limited liability company

By: *[Signature]*
Name: _____
Title: _____

GUARANTOR:

[Signature]
NICHOLAS A. KARRIS, individually

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF IL)
COUNTY OF Cook) ss

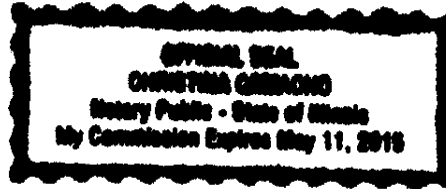
On the 4th day of August, 2011 before me, a notary public in and for the State and County aforesaid, personally appeared Lon Hernandez, the Vice President of **THE NORTHERN TRUST COMPANY**, an Illinois banking corporation, who is known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person acted and executed the instrument on behalf of the banking corporation, with authority duly given

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires:

05.11.2015



STATE OF IL)
COUNTY OF Cook) ss

On the 3rd day of August, 2011 before me, a notary public in and for the State and County aforesaid, personally appeared Nicholas Karris, the Managing Member of **1-15 E. SUPERIOR, LLC**, an Illinois limited liability company, who is known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person acted and executed the instrument on behalf of the limited partnership, with authority duly given

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires:

3-7-15



UNOFFICIAL COPY

STATE OF ILLINOIS)
) .ss
COUNTY OF Cook)

I, Jamie Komperda, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **NICHOLAS A. KARRIS** appeared before me this day in person and acknowledged that he signed and sealed the said instrument as his own free and voluntary act, and the free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 3rd day of August, 2011.

Jamie Komperda
Notary Public

My Commission Expires: 3-7-2015



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 1:

THE EAST 25 FEET OF THE WEST 100 FEET OF THE NORTH 106 FEET OF BLOCK 48 IN KINZIE'S ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE EAST 25 FEET OF THE WEST 125 FEET OF THAT PART NORTH OF THE SOUTH 112 FEET OF BLOCK 48 IN KINZIE'S ADDITION TO CHICAGO IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE WEST 75 FEET OF THE NORTH 106 FEET OF BLOCK 48 IN KINZIE'S ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 1-15 East Superior
Chicago, IL

PINS: 17-10-103-001-0000;
17-10-103-002-0000;