

UNOFFICIAL COPY

Doc#: 1622815003 Fee: \$68.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/15/2016 08:30 AM Pg: 1 of 11

This document prepared by, and after recording return to:

Drew J. Scott, Esq.
Scott & Kraus, LLC
150 S Wacker Dr., Suite 2900
Chicago, IL 60606

Property Address:
2245 W. Irving Park Road
Chicago, Illinois 60618

Tax Identification Number:
14-19-102-004-0000

The above area reserved for Recorder's use only.

THIRD MODIFICATION TO LOAN DOCUMENTS

THIS THIRD MODIFICATION TO LOAN DOCUMENTS dated as of July 17, 2016 (this "Modification"), by and between IN A ROW HOLDINGS, LLC, an Illinois limited liability company ("Borrower"), and INLAND BANK AND TRUST, an Illinois state chartered banking institution, as successor in interest to the FEDERAL DEPOSIT INSURANCE CORPORATION, as receiver for FIRST CHOICE BANK, by and through the Assignment of Loan Documents dated July 23, 2013 and recorded with the Cook County Recorder of Deeds on August 27, 2013 as Document Number 1323901022 ("Lender");

WITNESSETH:

WHEREAS, one or more of Borrower, Guarantors (as defined below) and Lender heretofore entered into the following documents (collectively, the "Loan Documents");

(i) Business Loan Agreement dated July 17, 2009, by and between Borrower and Lender ("Loan Agreement");

(ii) Promissory Note dated October 17, 2008 in the amount of \$1,080,000.00, as amended and restated by the Promissory Note dated July 17, 2009 in the amount of \$1,053,047.19 (the "Note"), from Borrower in favor of Lender;

(iii) Construction Mortgage dated as of October 17, 2008 from Borrower in favor of Lender evidencing the property legally described in Exhibit A attached hereto and made a part hereof, recorded in the office

UNOFFICIAL COPY

of the Cook County Recorder of Deeds (the "Recorder") on October 22, 2008 as document no. 0829640062 and amended by the Modification of Mortgage dated July 17, 2009 (together, the "Mortgage") from Borrower in favor of Lender, recorded in the office of the Recorder on August 25, 2009 as document no. 0923733113;

(iv) Assignment of Rents dated as of October 17, 2008 (the "Assignment of Rents"), from Borrower to Lender recorded in the office of the Recorder on October 22, 2008 as document no. 0829640063;

(v) Commercial Guaranty dated as of October 17, 2008, made by Raymond H. Tallud, an individual, in favor of Lender;

(vi) Commercial Guaranty dated as of October 17, 2008, made by Mark R. Jordan, an individual, in favor of Lender;

(vii) Commercial Guaranty dated as of October 17, 2008, made by Rachel T. Jordan, an individual, in favor of Lender;

(viii) Commercial Guaranty dated as of October 17, 2008, made by Marianita H. Calsita, an individual, in favor of Lender;

(ix) Commercial Guaranty dated as of October 17, 2008, made by Julie Noh-Tallud, an individual, in favor of Lender;

(x) Commercial Guaranty dated as of October 17, 2008, made by Rico R. Tallud, an individual, in favor of Lender;

(xi) Commercial Guaranty dated as of October 17, 2008, made by Mary L. Tallud, an individual (Mary L. Tallud, collectively with Raymond H. Tallud, Mark Jordan, Rachel T. Jordan, Marianita H. Calsita, Julie Noh-Tallud, Rico R. Tallud, are each a "Guarantor" and collectively, the "Guarantors") in favor of Lender;

(xii) Assignment of Deposit Account dated as of October 17, 2008, from Rico C. Tallud to Lender;

(xiii) Forbearance Agreement dated July 23, 2013 made by and among Borrower, Guarantors and Lender ("Forbearance Agreement"), whereby Borrower failed to pay when due amounts owing under terms of the Note;

(xiv) Second Modification to Loan Documents dated as of July 17, 2014 made by and between Borrower and Lender and recorded in the office of the Recorder on September 8, 2014 as document no. 1425154084; and

UNOFFICIAL COPY

(xv) the other "Related Documents" (as defined in the Loan Agreement).

WHEREAS, the Loan Documents evidence and secure a loan (the "Loan") in the current outstanding principal amount of \$914,768.10, made by Lender to Borrower; and

WHEREAS, the parties desire to make certain modifications and amendments to the Loan Documents, to among other things, (i) extend the maturity date of the Loan to November 14, 2016, and (ii) modify the Loan Documents to reflect all amendments, modifications, extensions, renewals, restatements, substitutions or replacements thereof through the date hereof, all pursuant to the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Modification to the Loan Documents.

(a) **Extend Maturity Date.** The Maturity of the Note is hereby extended from July 17, 2016 to November 14, 2016. All words and figures in the Note and the other Loan Documents in reference to the "Maturity", "maturity date", "Maturity Date" or other terms of similar use and effect shall mean November 14, 2016.

Section 2. Note is Current. As of the date hereof, regularly scheduled payments under the Note are current and the Loan is no longer considered in default.

Section 3. Representations and Warranties. In order to induce Lender to enter into this Modification, Borrower hereby represents and warrants to Lender as follows as of the date of this Modification:

(a) Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois, has all necessary power and authority to carry on its present business, and has full right, power and authority to enter into this Modification, and the Loan Documents and to perform and consummate the transactions contemplated hereby and thereby.

(b) This Modification and the Loan Documents have been duly authorized, executed and delivered by Borrower and constitute valid and legally binding obligations enforceable against Borrower. The execution and delivery of this Modification and the Loan Documents and compliance with the provisions thereof under the circumstances contemplated therein do not and will not conflict with or constitute a breach or violation of or default under the Articles of Organization or Operating Agreement of Borrower, or any agreement or other instrument to which Borrower is a party, or by which it is bound, or to which any of its properties are subject, or any existing law, administrative regulation, court order or consent decree to which it is subject.

UNOFFICIAL COPY

(c) Borrower is in compliance with all of the terms and conditions of the Loan Documents, and no Event of Default under any of the Loan Documents, as amended hereby, or event or condition which, with the giving of notice or the passage of time, or both, would constitute an Event of Default ("Unmatured Event of Default"), has occurred or is continuing.

(d) There is no litigation or administrative proceeding pending or, to the knowledge of Borrower, threatened to restrain or enjoin the transactions contemplated by this Modification or any of the Loan Documents, or questioning the validity thereof, or in any way contesting the existence or powers of Borrower, or in which an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Modification or any of the Loan Documents, or would result in any material adverse change in the financial condition, properties, business or operations of Borrower.

(e) The statements contained in the recitals to this Modification are true and correct.

Section 4. Conditions Precedent. This Modification shall become effective as of the date above first written after receipt by Lender of the following:

(a) **Modification.** This Modification executed by Borrower and Lender.

(b) **Resolutions.** A certificate of the manager of Borrower certifying no change to the Certificate of Manager of Borrower and resolutions authorizing the execution, delivery and performance of this Modification and the related Loan Documents.

(c) **Joinder by Guarantors.** The Joinder by Guarantors duly executed by each of the Guarantors.

(d) **Joinder by Pledgor.** The Joinder by Pledgor duly executed by Rico C. Tallud.

(e) **Expenses.** Borrower shall pay all costs and expenses in connection with the preparation of this Modification and other related loan documents, including, without limitation reasonable attorneys' fees and time charges of attorneys who may be employees of Lender or any affiliate or parent of Lender.

(f) **Other Documents.** Such other documents, certificates, resolutions and/or opinions of counsel, and pay such fees as Lender may request or have listed on the Closing Checklist of even date herewith.

Section 5. Loan Documents to Remain in Effect; Confirmation of Obligations; References. The Loan Documents shall remain in full force and effect as originally executed and delivered by the parties, except as expressly modified and amended herein. Borrower hereby (i) confirms and reaffirms all of its obligations under the Loan Documents, as modified and amended herein; (ii) acknowledges and agrees that Lender, by entering into this Modification, does not waive any existing or future Event of

UNOFFICIAL COPY

Default or Unmatured Event of Default under any of the Loan Documents, or any rights or remedies under any of the Loan Documents; (iii) acknowledges and agrees that Lender has not heretofore waived any Unmatured Event of Default or Event of Default under any of the Loan Documents, or any rights or remedies under any of the Loan Documents; and (iv) acknowledges that it does not have any defense, set off or counterclaim to the payment or performance of any of its obligations under the Loan Documents, as modified and amended herein. Each of the Loan Documents shall be deemed amended to give effect to the provisions of this Modification without need for referencing each of the Loan Documents by name. Without limiting the generality of the foregoing, Borrower and Lender acknowledge that the term "Loan Documents" shall mean all of the Loan Documents as modified by this Modification (and any notes, amendments and agreements delivered in connection herewith). Additionally, as used in the other Loan Documents, the term "Documents" and/or "Loan Documents" shall now be deemed to include this Modification and any other documents, instruments or agreements executed in connection herewith.

Section 6. Certifications, Representations and Warranties. In order to induce Lender to enter into this Modification, Borrower hereby certifies, represents and warrants to Lender that all certifications, representations and warranties contained in the Loan Documents and in all certificates heretofore delivered to Lender are true and correct as of the date as of the date of this Modification, and all such certifications, representations and warranties are hereby remade and made to speak as of the date of this Modification.

Section 7. Entire Agreement; No Reliance. This Modification sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Modification, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this Modification other than as are herein set forth. Borrower acknowledges that it is executing this Modification without relying on any statements, representations or warranties, either oral or written, that are not expressly set forth herein.

Section 8. Indemnification. Borrower agrees to defend (with counsel satisfactory to Lender), protect, indemnify, exonerate and hold harmless Lender, its directors, officers, agents, employees, shareholders, subsidiaries, attorneys and employees (each an "Indemnified Party") from time to time, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and distributions of any kind or nature (including, without limitation, the disbursements and the reasonable fees of counsel for each Indemnified Party thereto, which shall also include, without limitation, reasonable attorneys' fees and time charges of attorneys who may be employees of any Indemnified Party), which may be imposed on, incurred by, or asserted against, any Indemnified Party (whether direct, indirect or consequential and whether based on any federal, state or local laws or regulations, including, without limitation, securities laws, environmental laws, commercial laws and regulations, under common law or in equity, or based on contract or otherwise) in any manner relating to or arising out of this Modification or any of the other Loan

UNOFFICIAL COPY

Documents, or any act, event or transaction related or attendant thereto, the preparation, execution and delivery of this Modification and the other Loan Documents, including, but not limited to, the making or issuance and management of the Loan, the use or intended use of the proceeds of the Loan, the enforcement of Lender's rights and remedies under this Modification, the other Loan Documents, the Note, any other instruments and documents delivered hereunder, or under any other agreement between Borrower and Lender; provided, however, that Borrower shall not have any obligations hereunder to any Indemnified Party with respect to matters determined by a court of competent jurisdiction by final and nonappealable judgment to have been caused by or resulting from the willful misconduct or gross negligence of such Indemnified Party. To the extent that the undertaking to indemnify set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall satisfy such undertaking to the maximum extent permitted by applicable law. Any liability, obligation, loss, damage, penalty, cost or expense covered by this indemnity shall be paid to each Indemnified Party on demand, and failing prompt payment, together with interest thereon at the Default Rate from the date incurred by each Indemnified Party until paid by Borrower, shall be added to the obligations and liabilities of Borrower and be secured by the collateral described in the Loan Documents. The provisions of this Section shall survive the satisfaction and payment of the obligations and liabilities of Borrower and the termination of this Modification and the other Loan Documents.

Section 9. Successors. This Modification shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

Section 10. Severability. In the event any provision of this Modification shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11. Amendments, Changes and Modifications. This Modification may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

Section 12. Construction.

(a) The words "hereof," "herein," and "hereunder," and other words of a similar import refer to this Modification as a whole and not to the individual Sections in which such terms are used.

(b) References to Sections and other subdivisions of this Modification are to the designated Sections and other subdivisions of this Modification as originally executed.

(c) The headings of this Modification are for convenience only and shall not define or limit the provisions hereof.

UNOFFICIAL COPY

(d) Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

(e) Borrower, Lender, and their respective legal counsel, have participated in the drafting of this Modification, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Modification.

Section 13. Release and Waiver. Borrower does not possess (or have knowledge of) any claims, defenses, offsets or counterclaims against Lender (or its officers, directors, members, shareholders, employees or agents) relating to this Modification or the Loan Documents. In the event there exists any facts that would give rise to any claim, defense, offset or counterclaim against or with respect to the enforcement of this agreement or the Loan Documents, Borrower hereby unconditionally, irrevocably, and unequivocally waives and fully releases Lender (and its officers, directors, shareholders, employees or agents) of any such claim, defense, offset or counterclaim to the same extent as if such claims were the subject of a lawsuit adjudicated to conclusion and dismissed therein with prejudice.

Section 14. Execution of Counterparts. This Modification may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

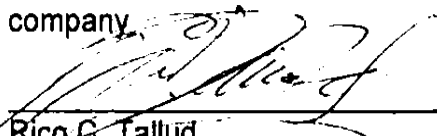
Section 15. Governing Law. Except with regard to the validity, enforcement and interpretation of the Mortgage and the Assignment of Rents, in which instances the law of the State of Illinois shall apply, this Modification shall be governed, in all other respects, by and construed in accordance with the laws of the State of Illinois, without regard to choice of law provisions.

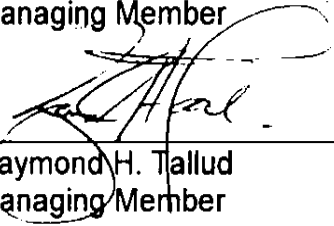
[SIGNATURE PAGES FOLLOW]

UNOFFICIAL COPY

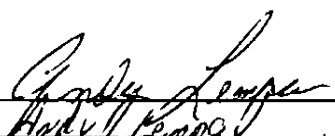
IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

IN A ROW HOLDINGS, LLC, an Illinois limited liability company,

By: 
Name: Rico G. Tallud
Its: Managing Member

By: 
Name: Raymond H. Tallud
Its: Managing Member

INLAND BANK AND TRUST, an Illinois state chartered banking institution

By: 
Name: Andy Leaper
Title: Vice President

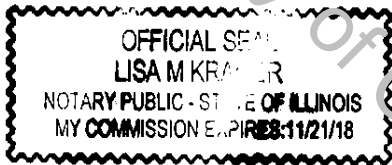
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE) SS

The undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Andy Lemps, the V.P. of INLAND BANK AND TRUST, an Illinois state chartered banking institution, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such authorized officer, he/she signed and delivered the said instrument as his/her free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth and pursuant to such bank's authority.

GIVEN under my hand and Notarial Seal on July 29th, 2016.



Lisa M Kramer
Notary Public

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Rico C. Tallud, the Managing Member of IN A ROW HOLDINGS, LLC, an Illinois limited liability company, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such manager, he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth and pursuant to such company's authority.

GIVEN under my hand and Notarial Seal on July 29th, 2016.



Lisa M Kramer
Notary Public

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

The undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Raymond H. Tallud, the Managing Member of IN A ROW HOLDINGS, LLC, an Illinois limited liability company, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such manager, he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth and pursuant to such company's authority.

GIVEN under my hand and Notarial Seal on July 29th, 2016.

Lisa M. Kramer
 Notary Public



UNOFFICIAL COPY

Exhibit A

Legal Description

LOT 10 (EXCEPT THE EAST 10 FEET THEREOF) AND LOT 11 (EXCEPT THE WEST 10 FEET THEREOF) IN BLOCK 8 IN THE SUBDIVISION OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THE SOUTHWEST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$ AND THE EAST $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SAID SECTION 19, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address: 2245 W. IRVING PARK ROAD, CHICAGO, ILLINOIS 60618

PIN: 14-19-102-004-0000