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Doc#: 1625057031 Fee: \$64.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 09/06/2016 09:52 AM Pg: 1 of 9

THIS DOCUMENT PREPARED
BY AND AFTER RECORDING
RETURN TO:

Clark Hill PLC
150 N. Michigan Ave.
Suite 2700
Chicago, IL 60601
Chad M. Poznanski, Esq

8935942 Xmas 11/14/1

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 3rd day of August, 2016, by and among EMERSON SKOKIE PARTNERS, LLC, a Delaware limited liability company ("Borrower") and WINTRUST BANK, a Illinois banking association, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of FOUR MILLION THREE HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED and 00/100 Dollars (\$4,321,500.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of March 1, 2016 between Borrower and Lender, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated March 1, 2016, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated March 1, 2016 from Borrower to Lender recorded with the Recorder of Deeds in Cook, County, Illinois (the "Recorder's Office") on March 10, 2016, as Document No. 1607012070 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and Leases dated March 1, 2016, from Borrower to Lender and recorded in the Recorder's Office on March 10, 2016, as Document No. 1607012071 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated March 1, 2016 from Borrower to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

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C. Borrower desires to amend the Loan Documents in order to increase the loan amount from FOUR MILLION THREE HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$4,321,500.00) to FOUR MILLION SEVEN HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$4,721,500.00).

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. Loan Amount. The Loan Amount shall be increased from FOUR MILLION THREE HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$4,321,500.00) to FOUR MILLION SEVEN HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$4,721,500.00). Any and all references in the Note, the Loan Agreement or any other Loan Document to FOUR MILLION THREE HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$4,321,500.00) shall be replaced with FOUR MILLION SEVEN HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$4,721,500.00).

2. Section 39(j) of the Mortgage shall be deleted in its entirety and replaced with the following:

“(j) Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to NINE MILLION FOUR HUNDRED FORTY THREE AND NO/100 DOLLARS (\$9,443,000.00); provided, however, in no event shall the Lender be obligated to advance funds in excess of the face amount of the Note.”

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

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

(b) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or 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 both, would constitute an Event of Default under the Note, the Mortgage or 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

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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 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 herein.

(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.

3. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 1401-008935942-D1 (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 Mortgage, subject 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.

4. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees and attorneys' fees and expenses. Borrower shall also pay an additional loan fee to Lender in the amount of \$3,000.00.

5. **Release of Lender.** In consideration of the Lender's execution of this Agreement as provided below, the Borrower does, on its behalf and on behalf of any successors and assigns, hereby fully and forever release, remise and forever discharge the Lender and its past and present officers, directors, employees, agents, attorneys, predecessors-in-interest, parents, subsidiaries, affiliates and assigns of and from any and all actions, claims, and causes of action, suits, debts, liabilities, dues, accounts, demands, obligations, costs, expenses, losses, damage and indemnities of every kind or nature whatsoever, whether known or unknown, suspected or unsuspected, contingent or fixed, which Borrower has, may have had, owns or holds, or at any time heretofore had, may have had, owned or held, whether based on contract, tort, statute, or other legal or equitable theory of recovery, including, but not limited to, the Loan Agreement, the Note, the other Loan Documents or this Agreement.

6. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

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(b) 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 and materially to the preparation of this Agreement, and Borrower 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 nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower and Lender each acknowledge 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 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) 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. 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 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 obligations under this Agreement.

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

LENDER:

BORROWER:

WINTRUST BANK

EMERSON SKOKIE PARTNERS, LLC,
an Illinois limited liability company

By: [Signature]
Name: Kevin Liberman
Title: Vice President

By: _____
Name: _____
Title: _____

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

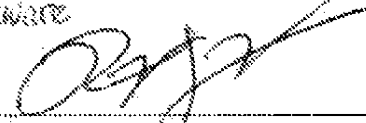
LENDER:

WINTRUST BANK

By: _____
Name: _____
Title: _____

BORROWER:

EMERSON SKOKIE PARTNERS, LLC,
a ~~limited~~ limited liability company
Delaware

By: 
Name: **RYAN LEVY**
Title: **AUTHORIZED SIGNER**

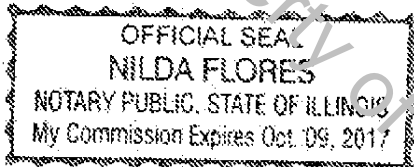
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STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I Nilda Flores, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Kevin Lichterman, V.P. of Wintrust Bank, is 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 that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 31 day of August, 2016.



Nilda Flores
Notary Public

My Commission Expires:
10-9-2017

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY _____, a _____, of EMERSON SKOKIE PARTNERS, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2016.

Notary Public

My Commission Expires:

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CHICAGO TITLE INSURANCE COMPANY

ORDER NUMBER: 1461 008935942 D1
 STREET ADDRESS: 9333 SKOKIE BLVD. SKOKIE, IL 60077-1310
 CITY: COUNTY: COOK
 TAX NUMBER: 10-15-115-017-0000
 10-15-115-020-0000

LEGAL DESCRIPTION:

LOTS 1, 2 AND 3 IN EMERSON CROSSING SUBDIVISION, BEING PARTS OF LOTS 1 AND 2 IN PARTITION BETWEEN THE HEIRS OF MICHAEL DIEDERICH OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

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