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KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 02/01/2017 02:50 PM PG: 1 OF 12

## LOAN MODIFICATION AGREEMENT

THIS LOAN MODIFICATION AGREEMENT (the "Agreement") is made and entered into as of the 25<sup>th</sup> day of January, 2017 by and among **MB FINANCIAL BANK, N.A.** (herein called "Lender"), **WINICK PROPERTY DEVELOPMENT, LLC SERIES (31) – 1346 W. WEBSTER, CHICAGO, ILLINOIS**, a Delaware series limited liability company (herein called "Borrower"), and **ADAM P. WINICK** (herein called "Guarantor").

**WITNESSETH**

WHEREAS, Borrower is the owner of certain real estate commonly known as 1346 W. Webster Avenue, which is located in Chicago, Illinois and more particularly described on Exhibit A attached hereto (the "Premises"); and

WHEREAS, Lender has heretofore made a loan (the "Loan") to Winick Property Development, LLC, a Delaware limited liability company ("LLC") in the stated principal sum of Four Hundred Forty Two Thousand Eight Hundred Dollars and No Cents (\$442,800.00); and

WHEREAS, the Loan is evidenced and secured by the following documents in favor of Lender (hereinafter, together with all other documents evidencing, securing or otherwise governing the Loan, collectively referred to as the "Loan Documents") each of which is dated as of January 19, 2012 unless otherwise stated:

- a. Promissory Note (the "Note") made by LLC to Lender in the stated principal sum of Four Hundred Forty Two Thousand Eight Hundred Dollars and No Cents (\$442,800.00);
- b. Commercial Guaranty (herein called "Guaranty") made by Adrian Winick (herein called "Prior Guarantor") in favor of Lender;
- c. Mortgage (herein called "Mortgage") made by LLC in favor of Lender encumbering the Premises and the improvements thereon and all other property,

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assets and collateral therein described, which was recorded in the Office of the Recorder of Deeds of Cook County, Illinois as Document Number 1202010074 (herein called the "Recorder's Office");

d. Assignment of Rents made by LLC, as assignor, to Lender, as assignee, which was recorded in the Recorder's Office as Document Number 1202010075;

e. Business Loan Agreement made by and between LLC and Lender; and

WHEREAS, LLC has conveyed the Premises to Borrower; and

WHEREAS, Lender, Borrower and Guarantor have agreed to certain modifications to the Loan Documents; and

WHEREAS, Guarantor has requested to assume the obligations, liabilities and responsibilities of Prior Guarantor under the Loan and Loan Documents as a guarantor of the Loan; and

WHEREAS, the agreements of the parties are set forth herein and limited to this Agreement.

## AGREEMENT

NOW, THEREFORE, for valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed, as of the date hereof, as follows:

1. **Preambles.** The preambles hereto are incorporated herein by reference as fully and with the same force and effect as if each and every term, provision and condition thereof was specifically recited herein at length.

2. **Definitions.** All capitalized terms herein not otherwise defined shall have the same meanings as in the Note, Mortgage and in the other Loan Documents.

3. **New Borrower.** Borrower is hereby added as the borrower of the Loan. Borrower hereby assumes all of the obligations, liabilities and responsibilities of LLC under the Loan and the Loan Documents. Any reference to borrower under any of the Loan Documents shall mean and refer to Borrower. LLC is hereby released as a borrower under the Loan and the Loan Documents.

4. **Increase in Loan Amount.** The Loan Amount is hereby increased to Four Hundred Eight Thousand Seventeen Dollars and No Cents (\$408,017.00). Any reference

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to the Note, the Loan or the Loan Amount in any of the Loan Documents shall mean and refer to the Note, the Loan and the Loan Amount in the amount of Four Hundred Eight Thousand Seventeen Dollars and No Cents (\$408,017.00).

5. **Amendment to Note.** In addition to any other modifications contained in this Agreement, the terms of the Note are hereby amended as follows:

(a) The following definitions shall be added to the Note:

"Interest Period" shall mean a one (1) month period commencing on the fifteenth (15<sup>th</sup>) day of each month during the term of the Loan.

"LIBOR Loan" shall mean any Loan bearing interest based upon the LIBOR Rate, plus the LIBOR Rate Margin.

"LIBOR Rate" means a rate of interest equal to the LIBOR rate for each Interest Period quoted by Lender from Bloomberg Financial Markets system (or such other authoritative source as selected by Lender in Lender's sole discretion), which shall be the LIBOR rate for each Interest Period in effect two (2) Banking Days (as defined below) prior to the first day of each Interest Period (rounded upward to the nearest 1/10,000 of 1.00%). Lender may unilaterally adjust the LIBOR Rate for any reserve requirement and any subsequent costs arising from a change in government regulation, or may substitute an alternative rate in the event the LIBOR Rate becomes unavailable. Lender's determination of the LIBOR Rate is conclusive, absent manifest error. As used in this definition, "Banking Day" means any day other than a Saturday, Sunday or any other day on which banks in London, England or Chicago, Illinois are required or permitted to close. In the event any government authority subjects Lender to any new or additional charge, fee, withholding or tax of any kind with respect to any loans hereunder or changes the method of taxation of such loans or changes the reserve or deposit requirements applicable to such loans, Borrower shall pay to Lender such additional amounts as will compensate Lender for such costs or lost income resulting therefrom as reasonably determined by Lender.

"LIBOR Rate Margin" shall mean two hundred five (205) basis points.

(b) The Maturity Date shall be January 15, 2022.

(c) Notwithstanding anything to the contrary contained in the Note, the interest rate shall be the greater of: (i) the LIBOR Rate plus the LIBOR Rate Margin or (ii) Two and Five-Hundredths Percent (2.05%) per annum.

(d) Notwithstanding anything to the contrary contained in the Note,

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Borrower will pay this Loan in 60 regular monthly payments of Seven Hundred Sixty Seven Dollars and Thirty Two Cents (\$767.32) in principal, plus monthly payments of interest and plus monthly payments of real estate tax escrow payments all due on the fifteenth (15<sup>th</sup>) day of each month during the term of the Loan with the next such payment due on February 15, 2017. Borrower shall pay all accrued interest, the unpaid principal balance of this Note and any other sums due with respect to the Loan on the Maturity Date. In the event of a negative amortization at any time during the Loan due to the Regular Rate, Lender shall recalculate Borrower's monthly payment of principal plus interest in Lender's sole discretion. THIS IS A BALLOON NOTE. THE PAYMENT OF PRINCIPAL IS CALCULATED ON THE BASIS OF A THIRTY (30) YEAR MODIFIED AMORTIZATION SCHEDULE WITH TWENTY FIVE AND ONE HALF (25.5) YEARS REMAINING, WITH THE UNPAID BALANCE DUE ON THE MATURITY DATE, AT WHICH TIME A SUBSTANTIAL AMOUNT OF PRINCIPAL SHALL REMAIN OUTSTANDING AND BE DUE.

6. **Amendment to Mortgage.** The Mortgage is modified to secure the Note as hereby modified and is deemed amended to conform to the terms and provisions hereof and the amendments and modifications to the Loan and Loan Documents effected hereby.

7. **Amendment to Guaranty.** In addition to any other modifications contained in this Agreement, the terms of the Guaranty are hereby amended as follows:

(a) Notwithstanding anything contained in the Guaranty to the contrary, the financial obligations under the Guaranty of Guarantor shall not exceed the guaranteed amount of One Hundred Two Thousand Four Dollars and No Cents (\$102,004.00) plus costs of collection.

(b) The Guaranty is modified to secure the Note as hereby modified and is deemed amended to conform to the terms and provisions hereof and the amendments and modifications to the Loan and Loan Documents effected hereby.

(c) Guarantor is hereby added as the guarantor under the Guaranty and the other Loan Documents. Any reference to guarantor or Guarantor in any of the Loan Documents shall mean and refer to Guarantor. Prior Guarantor is hereby released as a guarantor under the Guaranty and the other Loan Documents.

8. **Amendment to Loan Documents.** The Loan Documents are modified to secure the Note as hereby modified and are deemed amended to conform to the terms and provisions hereof and the amendments and modifications to the Loan and Loan Documents effected hereby. In addition to any other modifications contained in this Agreement, the terms of the Loan Documents are hereby further amended as follows:

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(a) The following shall be added as Events of Default under each of the Loan Documents:

1. If Borrower fails to provide to Lender, no later than three hundred fifteen (315) days after the end of each calendar year during the term of the Loan, the filed business tax return of Borrower.

2. If Borrower fails to provide to Lender, no later than one hundred twenty (120) days after the end of each calendar year during the term of the Loan, the annual operating statement of Borrower.

3. If Borrower fails to provide to Lender, no later than one hundred twenty (120) days after the end of each calendar year during the term of the Loan, the annual rent roll of the Premises.

4. If the Premises fail to maintain a minimum debt service coverage ratio of 1.15:1.00, as tested by Lender on an annual basis during the term of the Loan commencing on December 31, 2017, and determined by Lender based upon the then in-place rent roll for the Premises and trailing twelve (12) month operating expenses generated by the Premises versus the actual debt service (actual real estate expenses for the Premises will be utilized by Lender in this calculation, with minimum expenses to include five percent (5.0%) vacancy and a five percent (5.0%) management fee and with verified one time capital expenditures excluded).

9. **Continued Priority.** In the event that, by virtue of any of the terms, conditions and provisions of this Agreement, a lien or other property interest in the Premises otherwise junior in priority to the liens created by the Loan Documents shall gain superiority over the liens created by the Loan Documents, this Agreement shall, nunc pro tunc, be null and void without further action of the parties hereto to the fullest extent as if it had never been executed, to the end that the priority of the Loan Documents shall not be impaired.

10. **Title Insurance.** Concurrent with the execution and delivery hereof by Borrower, Borrower agrees to provide Lender with an endorsement to its mortgagee's policy of title insurance ("Title Policy"), which endorsement shall be acceptable to Lender and shall guarantee as of the date hereof that Borrower is the title holder and owner of the Premises and:

(a) there are no objections to title except (a) general real estate taxes for the year 2016 and subsequent years;

(b) reflects the recording of this Agreement;

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- (c) reflects the increased Loan Amount; and
- (d) re-dates the effective date of the Title Policy to the date of recording of this Agreement.

11. **Lender Expenses.** Borrower agrees to pay all costs, fees and expenses (including but not limited to legal fees) incurred by Lender in connection with the preparation and recording of this Agreement. Such of the foregoing as are incurred prior to the execution and delivery of this Agreement shall be paid concurrent with such execution and delivery. All other fees, costs and expenses shall be paid within five (5) business days after notice from Lender of the amount due and the reason therefor.

12. **Non-Waiver.** In the event Lender shall at any time or from time to time disburse portions of the Loan without Borrower first satisfying all conditions precedent set forth herein or in the Loan Documents, Lender shall not thereby be deemed to have waived its right to require such satisfaction of the same or other condition as a condition precedent to its obligations to make further disbursement of the Loan. Any forbearance by Lender in exercising any right or remedy under the Note, Guaranty, Mortgage, or any of the other Loan Documents or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that right or remedy or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any of its rights or remedies under any of the Loan Documents with respect to Borrower and Guarantor's obligations under the Loan Documents shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

13. **Ratification.** The Loan Documents are hereby ratified, confirmed and approved and are and shall remain in full force and effect pursuant to the terms and conditions set forth therein, except to the extent otherwise expressly modified hereby. Each of the Loan Documents is hereby modified and amended so that all references to such documents shall be deemed to be a reference to the Loan Documents as hereby modified and amended.

14. **Joinder of Guarantor.** Notwithstanding anything to the contrary contained herein, Guarantor has entered into this Agreement for the purpose of ratifying and confirming Guarantor's obligations under the Guaranty and the other Loan Documents, as amended hereby, and to acknowledge that the Guaranty and the other Loan Documents, as amended hereby, remain in full force and effect. Guarantor's execution of this Agreement shall serve as Guarantor's execution of the Guaranty and the other Loan Documents.

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15. **Release.** Borrower, Guarantor and any other obligor under the Loan, on behalf of themselves and their respective successors and assigns (collectively and individually, the "Mortgagor Parties"), hereby fully, finally and completely release, remise, acquit and forever discharge, and agree to hold harmless Lender and its respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, fiduciaries, attorneys, agents and properties, past, present and future, and their respective heirs, successors and assigns (collectively and individually, the "Mortgagee 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, direct or indirect, 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 (collectively, the "claims"), which the Mortgagor Parties have as of the date of this agreement or may claim to have against the Mortgagee Parties, including but not limited to, any claims 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 but not limited to, 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 the Mortgagee 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 the Mortgagee Parties with respect to all claims, demands, actions, causes of action and other matters described therein, or any other theory, cause of action, occurrence, matter or thing which might result in liability upon the Mortgagee Parties arising or occurring on or before the date of this Agreement. The Mortgagor 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. Furthermore, each of the Mortgagor Parties represents and warrants to Lender that she, he or it: (i) read this agreement, including without limitation, the release set forth in this section (the "Release Provision"), and understands all of the terms and conditions hereof, and (ii) executes this Agreement voluntarily with full knowledge of the significance of this Release Provision and the releases contained herein and execution hereof. The Mortgagor Parties agree to assume the risk of any and all unknown, unanticipated, or misunderstood claims that are released by this Agreement.

16. **Payment of Fee.** For and as additional consideration of Lender agreeing to enter into this Agreement, concurrent with Borrower's execution of this Agreement, Borrower shall pay Lender a fee of One Thousand Two Hundred Fifty Dollars and No Cents (\$1,250.00).


17. **Counterpart.** This Agreement may be executed in separate counterparts and such counterparts, taken together, shall constitute a fully executed and enforceable Agreement.

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

**LENDER:**


**MB FINANCIAL BANK, N.A.**

By:   
Name: James M. McGowan  
Title: S. V.P.


**BORROWER:**

**WINICK PROPERTY DEVELOPMENT, LLC SERIES (31) – 1346 W. WEBSTER, CHICAGO, ILLINOIS, a Delaware series limited liability company**

By: ICM Properties, Inc., an Illinois corporation, its manager,

By:   
Adam Winick, Vice-President and Secretary

**GUARANTOR:**

  
ADAM P. WINICK

Property of Cook County Clerk's Office



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STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF COOK            )

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that James McGowan, the S.V.P. of **MB Financial Bank, N.A.** personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of **MB Financial Bank, N.A.**, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 25 day of January, 2017.



Domenica Castro  
Notary Public

Notary of Cook County Clerk's Office

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STATE OF ILLINOIS     )  
   ) SS  
 COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, hereby certify that **ADAM WINICK**, the Vice-President and Secretary of ICM Properties, Inc., an Illinois corporation, the manager of **WINICK PROPERTY DEVELOPMENT, LLC SERIES (31) – 1346 W. WEBSTER, CHICAGO, ILLINOIS**, a Delaware series limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of **WINICK PROPERTY DEVELOPMENT, LLC SERIES (31) – 1346 W. WEBSTER, CHICAGO, ILLINOIS** for the uses and purposes therein set forth.

Given under my hand and notarial seal this 25 day of January 2017.

\_\_\_\_\_  
 Notary Public



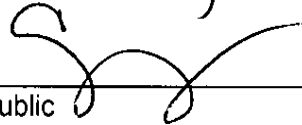
Cook County Clerk's Office

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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, hereby certify that **ADAM P. WINICK**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 25 day of January, 2017.

\_\_\_\_\_  
Notary Public 



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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 25 IN SUB BLOCK 5 IN WARD'S SUBDIVISION OF BLOCK 12 IN SHEFFIELD'S ADDITION TO CHICAGO, IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**Address of Property:**  
1346 W. Webster Avenue  
Chicago, IL 60614

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14-32-110-035-0000

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