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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 06/19/2017 01:37 PM Pg: 1 of 12

PREPARED BY:

Vivian Grigorians, Esq.
Sidley Austin LLP
555 West 5th Street, Suite 4000
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AFTER RECORDING RETURN TO:

ServiceLink
1400 Cherrington Parkway
Moon Township, PA 15108
SL # 3452310

**AMENDMENT TO CONSOLIDATED, AMENDED AND RESTATED MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT
AND FIXTURE FILING**

BETWEEN

ELM STREET HOMES, LLC
(Mortgagor)

AND

GERMAN AMERICAN CAPITAL CORPORATION
as collateral agent for the Lenders
(Mortgagee)

Dated: As of June 15, 2017
County: Cook
State: Illinois

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AMENDMENT TO CONSOLIDATED, AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS AMENDMENT TO CONSOLIDATED, AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "*Amendment*") is made as of this ___ day of June, 2017, by and between ELM STREET HOMES LLC, a Delaware limited liability company, as mortgagor, having its principal place of business at 909 N. Sepulveda Blvd, Suite #840, El Segundo, California 90245 ("*Mortgagor*"), and GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, solely in its capacity as collateral agent for the Lenders (as defined in the Loan Agreement (as hereinafter defined)), as mortgagee, having an address at 60 Wall Street, 10th Floor, New York, New York 10005 (together with its successors and/or assigns, "*Mortgagee*").

WITNESSETH:

A. Mortgagee and Mortgagor and the other Borrowers party thereto (the "*Other Borrowers*"), among others, entered into that certain Amended and Restated Loan Agreement dated June 27, 2014 (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "*Loan Agreement*") whereby Mortgagee agreed to advance the principal sum of up to TWO HUNDRED SEVEN MILLION SEVEN HUNDRED FORTY ONE THOUSAND SEVEN HUNDRED FIFTY AND 30/100 DOLLARS (\$207,741,750.30) ("*Original Loan*"). Such Original Loan was evidenced by one or more promissory notes dated June 27, 2014 made by Mortgagor and the other Borrowers to Mortgagee. Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.

B. In connection with the Original Loan, Mortgagor executed the Consolidated, Amended and Restated Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing identified on Schedule I attached hereto and encumbering those properties described on Schedule II attached hereto (the "*Original Mortgage*").

C. Mortgagor and the Other Borrowers have requested and Mortgagee has agreed, among other things, to extend the term of the Original Loan, and to increase the amount of the Original Loan to \$250,000,000.00 in accordance with a second amendment and restatement of the Loan Agreement that is being executed simultaneously herewith.

D. The parties wish to amend the Original Mortgage as provided herein.

NOW THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows, effective as of the date hereof:

1. Effective as of the date hereof:

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- a. Any reference to "Loan" in the Original Mortgage shall be construed to reference the loan described in the Loan Agreement in the maximum principal sum of TWO HUNDRED FIFTY MILLION and No/100 Dollars (\$250,000,000.00).
- b. Reserved.
- c. Reserved.
- d. The second sentence of Section 3.02 in the Original Mortgage is hereby amended, replaced and superseded in its entirety by the following:

In the event of any inconsistency between any of the terms of this Mortgage (including the terms of Section 1.03 herein) and the Loan Agreement or any other Loan Document, the terms of the Loan Agreement (or, to the extent not conflicting with the Loan Agreement, the terms of such other Loan Document) shall control, except that in the event of any inconsistency between the terms of the Loan Agreement or any other Loan Document and Article XV hereof, the terms of Article XV shall control (without limiting Section 12.01 hereof) if and to the extent the laws of the state where the Property is located govern the interpretation or enforcement of such inconsistent terms.

- e. The second sentence of Section 7.01(d)(i) in the Original Mortgage is hereby amended, replaced and superseded in its entirety by the following:

Where the Property consists of Real Property (including, without limitation, all Fixtures), Personal Property or Equipment, whether or not such Personal Property or Equipment is located on or within the Real Property, Mortgagee shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property (including, without limitation, all Fixtures), Personal Property and Equipment in such order and manner as is now or hereafter permitted by applicable law;

- f. Section 7.01(d)(ii) in the Original Mortgage is hereby amended, replaced and superseded in its entirety by the following:

Mortgagee shall be entitled to elect to proceed against any or all of the Real Property (including, without limitation, all Fixtures), Personal Property and Equipment in any manner permitted under applicable law; and if Mortgagee so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property (including, without limitation, all Fixtures), Personal Property and Equipment covered hereby, as designated by Mortgagee and Mortgagee is hereby authorized and empowered to conduct any such sale of any Real Property (including, without limitation, all Fixtures), Personal Property and Equipment in accordance with the procedures applicable to Real Property;

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- g. The first sentence of Section 7.01(d)(iii) in the Original Mortgage is hereby amended, replaced and superseded in its entirety by the following:

Should Mortgagee elect to sell any portion of the Property which is Real Property (including, without limitation, all Fixtures), or which is Personal Property or Equipment that Mortgagee has elected under applicable law to sell together with Real Property in accordance with the laws governing a sale of the Real Property, Mortgagee shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property, each as may then be required by law.

- h. The first sentence in Section 12.01(a) in the Original Mortgage is hereby amended, replaced and superseded in its entirety by the following:

WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND ENFORCEMENT OF LIENS AND SECURITY INTERESTS CREATED UNDER THIS MORTGAGE, THIS MORTGAGE SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW) SHALL GOVERN ALL MATTERS RELATING TO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER.

- i. Section 15.05 in the Original Mortgage is hereby reaffirmed.
2. The Original Mortgage is modified and amended only as expressly provided in this Amendment. In all other respects, matter, form and content, the Original Mortgage, as herein amended, shall remain as originally executed by the parties hereto and in full force and effect and is hereby ratified and confirmed. Nothing in this Amendment shall be understood or construed to be a satisfaction or release, in whole or in part of Mortgagor's or any other party's obligations under the Loan Documents. Further, Mortgagor and Mortgagee shall be bound by, and shall comply with, all of the terms and provisions thereof and of the Loan Documents.
3. This Amendment is intended as a renewal and extension of the Original Mortgage and is not a novation of the Original Mortgage. This Amendment shall not in any manner interrupt or impair the continuing first priority lien (subject to Permitted Liens) of the Original Mortgage or affect the validity or enforceability of the Original Mortgage, Note or any other Loan Document.

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4. This Amendment shall be binding upon, and shall inure to the benefit of, Mortgagor and Mortgagee and their respective successors and permitted assigns, as set forth in the Loan Agreement.
5. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
6. **WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND ENFORCEMENT OF THIS AMENDMENT, THIS AMENDMENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW) SHALL GOVERN ALL MATTERS RELATING TO THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT.**

[SIGNATURES FOLLOW ON NEXT PAGE]

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IN WITNESS WHEREOF, THIS AMENDMENT has been executed by the parties hereto to be effective as of the day and year first written above.

MORTGAGOR:

ELM STREET HOMES, LLC,
a Delaware limited liability company

By: _____
Name: **Stuart Rothstein**
Title: **Authorized Person**

STATE OF NEW YORK)
)
) ss.:
COUNTY OF NEW YORK)

On the 9th day of June in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared Stuart Rothstein, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument. Witness my hand and official seal.


Notary Public

CAROLYN A. CARLSEN
Notary Public, State of New York
No. 01CA6019371
Qualified in Suffolk County
Commission Expires February 8, 20 19

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MORTGAGEE:

GERMAN AMERICAN CAPITAL CORPORATION,
a Maryland corporation

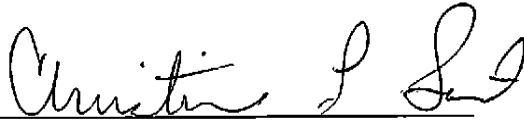
By: 
Name: Menaheh Namer
Title: Director

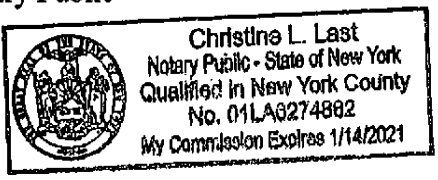
By: 
Name: Matt Smith
Title: Director

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STATE OF NEW YORK)
)
) ss.:
COUNTY OF NEW YORK)

On the 8 day of June in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared Menaheh Namer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument. Witness my hand and official seal.


Notary Public



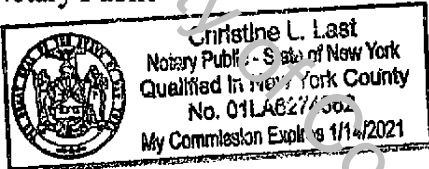
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STATE OF NEW YORK)
)
) ss.:
COUNTY OF NEW YORK)

On the 8 day of June in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared Matt Smith, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument. Witness my hand and official seal.

Cristine L. Last

Notary Public



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SCHEDULE I

1. Consolidated, Amended and Restated Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated June 27, 2014, executed by Elm Street Homes, LLC as Mortgagor and German American Capital Corporation as Mortgagee, relating to the real property described therein and located in Cook County, Illinois, as recorded in the Official Records Recorder's Office, Cook County, Illinois, on January 20, 2015, as Instrument No. 1502044045.

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SCHEDULE II

Property Descriptions

(See attached.)

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Schedule II

ESH001

All That Certain Parcel Of Land Situate In The County Of Cook, State Of Illinois, Being Known And Designated As Follows: Lot 555 In Glenbrook Unit Number 7, Being A Subdivision Of Part Of The South ½ Of Section 13, Township 41 North, Range 9, East Of The Third Principal Meridian, According To The Plat Thereof Recorded April 16, 1971 As Document 21451164, In Cook County, Illinois.

Parcel #: 06-13-409-013-0000

More commonly known as: 215 David Dr, Streamwood, IL 60107

ESH022

All That Certain Parcel Of Land Situate In The County Of Cook, State Of Illinois, Being More Particularly Described As Follows: Lot 1367 In Woodland Heights Unit 4, Being A Subdivision In Sections 23 And 24, Township 41 North, Range 9, East Of The Third Principal Meridian, According To The Plat Thereof Registered In The Office Of The Registrar Of Titles Of Cook County, Illinois On July 14, 1960 As Document No. 1931799, In Cook County, Illinois.

Parcel #: 06-23-216-014

More commonly known as: 209 Villa Rd, Streamwood, IL 60107

ESH045

All That Certain Parcel Of Land Situate In The County Of Cook, State Of Illinois, Being Known And Designated As Follows: Lot 1007 In Woodland Heights Unit 3, Being A Subdivision In Section 23, Township 41 North, Range 9, East Of The Third Principal Meridian According To The Plat Thereof Registered In The Office Of The Registrar Of Titles Of Cook County, Illinois, On July 14, 1960 As Document Number 1931799 In Cook County, Illinois.

Parcel #: 06-23-208-022

More commonly known as: 505 E Schaumburg Rd, Streamwood, IL 60107

ESH070

All That Certain Parcel Of Land Situate In The County Of Cook, State Of Illinois, Being Known And Designated As Follows: Lot 16 In Whispering Pond, Being A Subdivision In The Southwest Quarter Of The Southeast Quarter Of Section 22, Township 41 North, Range 9, East Of The Third Principal Meridian, According To The Plat Thereof Recorded, February 14, 1989 As Document Number 89068145, In Cook County, Illinois.

Parcel #: 06-22-414-016

More commonly known as: 7 Whispering Ct, Streamwood, IL 60107

ESH073

All That Certain Parcel Of Land Situate In The County Of Cook, State Of Illinois, Being Known And Designated As Follows: Lot 206 In Oak Knoll Farms Unit III, Being A Subdivision Of Part Of Sections 22 And 23, Township 41 North, Range 9 East Of The Third Principal Meridian, In Cook County, Illinois.

Parcel #: 06-22-213-007

More commonly known as: 52 Garfield Ln, Streamwood, IL 60107

ESH085

All That Certain Parcel Of Land Situate In The County Of Cook, State Of Illinois, Being Known And Designated As Follows: Lot 75 In Meadows South Phase II Subdivision, Being That Part Of The East 1/2 Of The Northwest 1/4 Of Section 25, Township 41 North, Range 9 East Of The Third Principal Meridian, According To The Plat Thereof Recorded October 7, 1988 As Document 88463404 In Cook County, Illinois.

Parcel #: 06-25-117-017

More commonly known as: 7 Woodview Ct, Streamwood, IL 60107

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ESH141

All That Certain Parcel Of Land Situate In The County Of Cook, State Of Illinois, Being Known As Follows: Lot 77 In Meadows South Phase 2, Being That Part Of The East 1/2 Of The Northwest 1/4 Of Section 25, Township 41 North, Range 9 East Of The Third Principal Meridian, According To The Plat Thereof Recorded October 7, 1988 As Document No. 88463404, In Cook County, Illinois.

Parcel #: 06-25-117-019-0000

More commonly known as: 3 Woodview Ct, Streamwood, IL 60107

ESH155

All That Certain Parcel Of Land Situate In The County Of Cook, State Of Illinois, Being Known And Designated As Follows: Lot 3 In Block 10 In Streamwood Unit Number 4, Being A Subdivision In The West 1/2 Of Section 23, Township 41 North, Range 9, East Of The Third Principal Meridian, According To The Plat Thereof Recorded April 23, 1958 As Document Number 17188252, In Cook County, Illinois.

Parcel #: 06-23-113-003

More commonly known as: 400 Cedar Cir, Streamwood, IL 60107

ESH176

All That Certain Parcel Of Land Situate In The County Of Cook, State Of Illinois, Being Known And Designated As Follows: Lot 2702 In Woodland Heights Unit 6, Being A Subdivision In Section 23, 24, 25 And 26, All In Township 41 North, Range 9, East Of The Third Principal Meridian, According To The Plat Thereof Recorded In Recorder'S Office March 8, 1963 As Document 18737475 In Cook County, Illinois.

Parcel #: 06-26-216-008-0000

More commonly known as: 703 Wildwood Ln, Streamwood, IL 60107

All That Certain Parcel Of Land Situate In The County Of Cook, State Of Illinois, Being Known And Designated As Follows: Lot 376 In Glenbrook Unit Number 5, Being A Subdivision Of Part Of The South 1/2 Of Section 13, Township 41 North, Range 9, East Of The Third Principal Meridian, In Cook County, Illinois.

Parcel #: 06-13-411-018

More commonly known as: 1323 N Green Meadows Blvd, Streamwood, IL 60107

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