

UNOFFICIAL COPY



Doc# 1815106172 Fee \$54.00

RHSP FEE: \$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 05/31/2018 03:33 PM PG: 1 OF 9

This Instrument Prepared by,
and After Recording Return to:

Adam J. Findlay
O'Donnell, Callaghan & Haddad, LLC
28045 N. Ashley Circle, Suite 101
Libertyville, IL 60048

**FIRST AMENDMENT TO MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT
OF RENTS AND FIXTURE FILING**

THIS FIRST AMENDMENT TO MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING (this "Amendment") made as of May 21, 2018, with an effective date of May 21, 2018, by and between **TIMBER TRAILS DEVELOPMENT COMPANY, LLC**, an Illinois limited liability company, its successors and assigns, having an address at 1010 White Pine Lane, Western Springs, Illinois 60558 ("**Borrower**"), **REAL PROPERTY HOLDING - WESTERN SPRINGS IL, LLC**, a Delaware limited liability company, its successors and assigns ("**RPH1**"), and **REAL PROPERTY HOLDING - WESTERN SPRINGS IL, PHASE 2, LLC**, a Delaware limited liability company, its successors and assigns ("**RPH2**"), RPH1 and RPH2 both having an address c/o Medley Capital, 280 Park Avenue, Floor 6 East, New York, NY 10017, with Timber Trails as mortgagor and RPH1 and RPH2 collectively as mortgagee (RPH1 and RPH2 are sometimes referred to collectively herein as "**Lender**").

RECITALS

A. WHEREAS, pursuant to the terms of that certain Purchase Money Promissory Note from Borrower for the benefit of Lender dated August 30, 2017, in the original principal amount of Eleven Million Two Hundred Seventy-Six Thousand Three Hundred Thirty-Four and No/100 Dollars (\$11,276,334.00), as it may be further modified, amended and/or restated from time to time (the "**Note**"), Lender made a purchase money loan to Borrower in like amount (the "**Loan**"). Borrower has executed and delivered to Lender a certain Mortgage, Security Agreement, Assignment of Rents and Fixture Filing dated August 30, 2017, and recorded January 22, 2018, with the Cook County Recorder of Deeds (the "**Recorder**") as Document No. 1802201096 (the "**Mortgage**"), which Mortgage presently encumbers the real property described on **Exhibit A** attached hereto.

B. WHEREAS, Borrower and Lender have agreed to enter into that certain First Amendment to Purchase Money Promissory Note of even date herewith between Borrower and Lender (the "**Note Amendment**"), whereunder, Borrower and Lender have agreed to, among other things, (i) extend the Maturity Date of the Note from August 30, 2019, to August 31, 2022, (ii) modify the interest rate due and payable under the Note to be a fixed rate of eight percent (8.00%) per annum, (iii) modify the principal and interest payments due and payable under the Note, (iv) provide for a required reduction of the Amended Principal Amount, and (v) provide that Lender's sole security for payment of the Amended Principal Amount, any amount due under the Note, any

CCRO REVIEW

UNOFFICIAL COPY

amount due under the Remainder Price Mortgage, any amount due under the Option Agreement, interest, costs of collection, costs of enforcement, attorneys' fees, any sums advanced by Lender to Borrower as of the date hereof, and any sums advanced by Lender to Borrower in the future, shall be the Pledged Collateral, as amended from time to time, and Lender shall have no recourse in assets of Borrower other than the Pledged Collateral, as amended from time to time, for the satisfaction of all remedies of Lender under the Note, under the Remainder Price Mortgage, at law, in equity, or otherwise.

C. WHEREAS, upon execution of the Note Amendment, the Note, as amended and modified by the Note Amendment, or as it may be further modified, amended and/or restated from time to time, shall be deemed a single document containing Borrower's and Lender's complete agreement with respect to the matters contained therein and shall supersede all other agreements, understandings and representations, oral or otherwise, between the parties and shall, thereafter and hereafter, be deemed the "**Amended Note**". The Amended Note shall be binding upon and shall inure to the benefit of the parties thereto and their respective successors, assigns, heirs, administrators, fiduciaries, next of kin and executors. The Amended Note evidences the all of the indebtedness incurred under, and is subject to the terms and provisions of, the Amended Note, as amended from time to time, and the Remainder Price Mortgage, as amended from time to time."

D. WHEREAS, as a condition precedent to execution of the Note Amendment, Borrower and Lender wish to amend the Mortgage to reflect, among other things, the terms and conditions of the Amended Note.

E. NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, and in further consideration of the mutual promises contained herein, Borrower and Lender agree as follows:

1. **Recitals**. The recitals set forth above are accurate and complete and are hereby restated and made a part of this Amendment by this reference.

2. **Maturity Date**. Borrower and Lender agree that the Maturity Date of the Note is extended from August 30, 2019, to August 31, 2022, in accordance with the terms and payments set forth in the Amended Note. To reflect such extension, and to conform the Mortgage to the Amended Note, any and all references to "August 30, 2019" or the "Maturity Date" contained in the Mortgage are hereby deleted and replaced with the date "August 31, 2022".

3. **Mortgage Modifications**. Borrower and Lender agree that it is necessary and desirable to modify and amend the Mortgage to reflect Borrower's and Lender's complete agreement with respect to the matters contained therein and agree to modify and amend the Mortgage as follows:

(a) All references to the "Option Agreement" in the Mortgage are hereby be deleted.

(b) "Recitals" is hereby modified to delete the following language:

"of even date herewith made by Borrower and payable to Lender in said Loan Amount (the "**Note**") and is payable by Borrower to Lender in accordance with the terms and conditions provided in the Note and nthe Third Amendment. Borrower desires to secure the payment of the Debt (defined in Section 2.1) and the

UNOFFICIAL COPY

performance of all of its obligations under the Note, the Option Agreement and the Other Obligations (defined in Section 2.2).”

and the deleted language shall be replaced with the following:

“which has been modified and amended by a certain First Amendment to Purchase Money Promissory Note, and as it may be further modified, amended and/or restated from time to time (the “Note”).”

- (c) Section 1.1 of the Mortgage is hereby deleted in its entirety and replaced with the following replacement Section 1.1:

Property Mortgaged. Borrower does hereby irrevocably mortgage, and grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender, a security interest in the real property described in Exhibit A attached hereto and made a part hereof (the “Property”).”

- (d) Section 3.2 of the Mortgage is hereby deleted in its entirety and replaced with the following replacement Section 3.2:

Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Note and (b) this Security Instrument, together with any supplements, amendments, modifications or alterations thereto (collectively, the “Loan Documents,” and individually sometimes referred to as a “Loan Document”), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.”

- (e) Section 3.4 of the Mortgage is hereby amended to include the following additional Section 3.4(c):

“(c) Lender transferred and conveyed to Borrower all right, title and interest in and to certain Village of Western Springs, Illinois Special Assessment Bonds, Series 2006, in the original principal amount of \$55,000,000 (the “Bonds”), pursuant to a certain Absolute Assignment of Bonds, Bond Documents and Proceeds, dated August 30, 2018 (the “Assignment”). Notwithstanding anything to the contrary, whether stated in the Note, this Security Agreement, or any other agreement, understanding, or representation, between the parties, oral, written, or otherwise, Borrower shall have no obligation to pay, remove, release, or remit, transfer, convey, or otherwise effect the Bonds, Bond Documents and Bond Proceeds, as defined in the Assignment, and shall retain all right, title, and interest to the Bonds, Bond Documents and Bond Proceeds, as set forth in the Assignment. Lender has no security interest in the Bonds, Bond Documents and Bond Proceeds, as defined in the Assignment. Lender shall have no recourse in Bonds, Bond Documents and Bond Proceeds (or any portion thereof) for the satisfaction of the remedies of Lender under the Note, this Security Instrument, the Loan Documents, at law, in equity, or otherwise, or for any payment required to be made under the Note, this Security Instrument, the Loan Documents. Borrower further retains the right to later convey any or all right, title and interest in and to the Bonds, Bond Documents and Bond Proceeds, as defined in the

UNOFFICIAL COPY

Assignment to any individual or entity, whatsoever, notwithstanding anything to the contrary, whether stated in the Note, this Security Agreement, or any other agreement, understanding, or representation, between the parties, oral, written, or otherwise.”

(f) Section 8.1 of the Mortgage is hereby modified to delete the following language:

“(ii) upon payment to Lender of the Lot Release Price (as defined in the Third Amendment) for the Lot(s) so transferred.”

the deleted language shall be replaced with the following:

“(ii) upon payment to Lender of the Lot Release Price (as defined in Section 18.1) for the Lot(s) so transferred.”

(g) Section 11.1 of the Mortgage is hereby deleted in its entirety and replaced with the following replacement Section 11.1:

~~“No Recourse.~~ Notwithstanding anything to the contrary, whether stated in the Note, this Security Agreement, or any other agreement, understanding, or representation, between the parties, oral, written, or otherwise, Borrower, its members, and its or their assigns shall have no personal liability for payment of the Debt, any amount due or any indemnification required under the Note, any amount due or any indemnification required under this Security Agreement, any amount due or any indemnification required under the Loan Documents, any interest, costs of collection, costs of enforcement, attorneys’ fees, any sums advanced by Lender to Borrower as of the date hereof, any sums advanced by Lender to Borrower in the future, or any interest upon any of the foregoing or other charges in connection therewith, and Lender shall instead look solely to the Property for the satisfaction of each of the foregoing.

Lender’s sole security for payment of the Debt, any amount due under the Note, any amount due under this Security Agreement, any amount due under the Loan Documents, any interest, costs of collection, costs of enforcement, attorneys’ fees, any sums advanced by Lender to Borrower as of the date hereof, or any sums advanced by Lender to Borrower in the future, shall be the Property. Lender shall have no recourse in assets of Borrower, its members, and its or their assigns other than the Property for the satisfaction of all remedies of Lender under the Note, this Security Agreement, the Loan Documents, at law, in equity, or otherwise, or for any payment required to be made by Borrower to Lender.”

(h) Section 20.1 of the Mortgage is hereby modified to delete the following language:

“the word “Note” shall mean “the Note, the Option Agreement and any other evidence of indebtedness secured by this Security Instrument,” the word “Property” shall include any portion of the Property and any interest therein”

the deleted language shall be replaced with the following:

UNOFFICIAL COPY

“the word ‘Note’ shall mean ‘the Note, as amended and modified by the Note Amendment, or as it may be further modified, amended and/or restated from time to time,’ the word ‘Property’ shall include the real property identified in Exhibit A, but only until such time as the real property, or any portion thereof, is released pursuant to the Note and/or Section 18.1 of this Security Instrument”.

- (i) Section 22.1 of the Mortgage is hereby modified to delete the language “notwithstanding anything contained herein to the contrary”; the deleted language is hereby replaced with “and subject to the term and conditions of Section 11.1 of this Security Instrument”.
- (j) Section 22.1(a) of the Mortgage is hereby modified to delete the language “inconsistent with any provision of”; the deleted language is hereby replaced with “unlawful pursuant to”.
- (k) Section 22.1(a) of the Mortgage is hereby modified to delete the following language:

“If any provision of this Security Instrument shall grant to Lender any rights or remedies upon an Event of Default which are more limited than the rights that would otherwise be vested in Lender under the IMFL in the absence of such provision, Lender shall be vested with the rights granted in the IMFL to the full extent permitted by law.”
- (l) Section 22.1(i) of the Mortgage is hereby modified to delete the language “In addition to any provision of this Security Instrument”; the deleted language is hereby replaced with “Subject to the term and conditions of Section 11.1 of this Security Instrument, and in addition to any provision of this Security Instrument”.
- (m) The following provisions of the Mortgage are hereby deleted in their entirety: Section 1.3; 1.4; 3.5; 3.20; 11.7(c); 11.12; 14.4; 22.1(g); and 22.1 (h).

4. Complete Agreement. This Amendment is Borrower’s and Lender’s complete agreement with respect to the matters contained herein and shall supersede all other agreements, understandings and representations, oral or otherwise, between the parties, and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

5. Continued Validity/Conflicts/Partial Invalidity. Except as otherwise provided in this Amendment, all other terms and conditions set forth in the Mortgage shall remain in full force and effect, with the same effect. In the event of any conflict between the provisions of this Amendment and the provisions of the Mortgage, the provisions of this Amendment in each case shall govern and control. The invalidity or unenforceability of any of the provisions of this Amendment shall not affect or impair any of the other provisions hereof or any of the provisions of the Mortgage.

6. Modification. No extension, change, modification or amendment of any kind or nature whatsoever, to or of this Amendment shall be made or claimed by Borrower or Lender, and no notice of any extension, change, modification or amendment, made or claimed by Borrower or Lender shall have any force or effect whatsoever unless the same shall be reduced to writing and signed by Borrower and Lender.

7. Time of Essence. Time is of the essence of this Amendment.

UNOFFICIAL COPY

8. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same instrument.

[signatures on following pages]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, this First Amendment to Mortgage, Security Agreement, Assignment of Rents and Fixture Filing has been executed as of the date first above written.

LENDER

REAL PROPERTY HOLDING - WESTERN SPRINGS IL, LLC, a Delaware limited liability company (RPH1)

By: **TIMBER TRAILS LLC**, a Delaware limited liability company, its sole Member

By: **MOF II HOLDINGS LLC**, a Delaware limited liability company, its sole Member and sole Manager

[Handwritten Signature]

By: _____

Name: Richard T. Allorto
Its: Chief Financial Officer

Date of Execution: May 21, 2018

I, Varda Varezao-Kunz, a Notary Public in and for Nassau County, in the state of New York DO HEREBY CERTIFY that Richard Allorto as CFO of MOF II HOLDINGS LLC, a Delaware limited liability company, 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 has signed and delivered the said First Amendment to Mortgage, Security Agreement, Assignment of Rents and Fixture Filing on behalf of said limited liability company, as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21 day of May, 2018.

[Handwritten Signature]
Notary Public

My commission expires: January 2, 2022

REAL PROPERTY HOLDING - WESTERN SPRINGS IL, PHASE 2, LLC, a Delaware limited liability company (RPH2)

By: **TIMBER TRAILS LLC**, a Delaware limited liability company, its sole Member

By: **MOF II HOLDINGS LLC**, a Delaware limited liability company, its sole Member and sole Manager

[Handwritten Signature]

By: _____

Name: Richard T. Allorto
Its: Chief Financial Officer

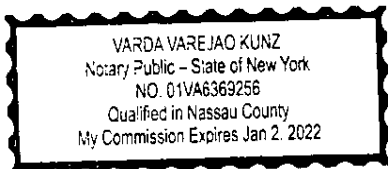
Date of Execution: May 21, 2018

I, Varda Varezao-Kunz, a Notary Public in and for Nassau County, in the state of New York DO HEREBY CERTIFY that Richard Allorto as CFO of MOF II HOLDINGS LLC, a Delaware limited liability company, 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 as officer of said limited liability company, he has signed and delivered the said First Amendment to Mortgage, Security Agreement, Assignment of Rents and Fixture Filing on behalf of said limited liability company, as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21 day of May, 2018.

[Handwritten Signature]
Notary Public

My commission expires: January 2, 2022

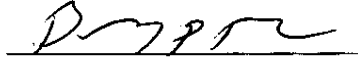


UNOFFICIAL COPY

BORROWER

TIMBER TRAILS DEVELOPMENT COMPANY, LLC, an Illinois limited liability company

By: **Western Springs Development LP**, an Illinois limited partnership, its Manager

By: 
Brian P. Taylor, General Partner

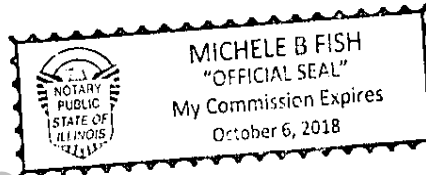
Date of Execution: May 24, 2018

I Michele B Fish, a Notary Public in and for Cook County, in the state of Illinois, DO HEREBY CERTIFY that Brian P. Taylor, as the sole general partner of Western Springs Development, L.P., 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 as officer of said entity, he signed and delivered the said First Amendment to Mortgage, Security Agreement, Assignment of Rents and Fixture Filing on behalf of said entity, as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24 day of May, 2018.

Michele B. Fish
Notary Public

My Commission Expires: 10-6-18



UNOFFICIAL COPY

EXHIBIT A

Legal Description

LOT 114, AND LOTS 121-129, BOTH INCLUSIVE, IN TIMBER TRAILS SUBDIVISION UNIT 2, BEING A RESUBDIVISION OF OUTLOT N IN TIMBER TRAIL SUBDIVISION UNIT 1, BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID TIMBER TRAILS SUBDIVISION UNIT 2, RECORDED FEBRUARY 22, 2007 AS DOCUMENT 0705315075, ALL IN COOK COUNTY, ILLINOIS.

<u>Lot</u>	<u>Common Address</u>	<u>PIN</u>
114	5900 Flagg Creek Lane, Western Springs, IL 60558	18-18-407-010-0000
121	1115 Spruce Drive, Western Springs, IL 60558	18-18-413-001-0000
122	1113 Spruce Drive, Western Springs, IL 60558	18-18-413-002-0000
123	1111 Spruce Drive, Western Springs, IL 60558	18-18-413-003-0000
124	1109 Spruce Drive, Western Springs, IL 60558	18-18-413-004-0000
125	1107 Spruce Drive, Western Springs, IL 60558	18-18-413-005-0000
126	1105 Spruce Drive, Western Springs, IL 60558	18-18-413-006-0000
127	1103 Spruce Drive, Western Springs, IL 60558	18-18-413-007-0000
128	1101 Spruce Drive, Western Springs, IL 60558	18-18-413-008-0000
129	6008 Burr Oak Drive, Western Springs, IL 60558	18-18-413-009-0000