



Doc# 1919106122 Fee \$88.00

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

EDWARD H. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 07/10/2019 12:27 PM PG: 1 OF 11

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING
RETURN TO:

Clark Hill PLC
130 E. Randolph Street, Suite 3900
Chicago, Illinois 60601
Chad M. Poznansky, Esq

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MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 19 day of June, 2019, by and between MNA FRONTIER LLC, an Illinois limited liability company ("Borrower"), CULLEN J. DAVIS ("Guarantor") and WINTRUST BANK, an Illinois banking association, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore agreed to lend the principal amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) ("Loan") to Borrower pursuant to the terms and conditions of a Loan Agreement dated July 10, 2018 (as amended from time to time, "Loan Agreement") between Borrower and Lender. The Loan is evidenced by a certain Promissory Note dated as of July 10, 2018, from Borrower to Lender, in the principal amount of the Loan ("Note").

B. The Note is secured by, among other things, (i) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated July 10, 2018, from Borrower to Lender recorded with the Recorder of Deeds in Cook, County, Illinois (the "Recorder's Office") on July 16, 2018, as Document No. 1819755157 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto as Parcels 1-3 ("Property"), (ii) that certain Assignment of Rents and Leases dated July 10, 2018, from Borrower to Lender and recorded in the Recorder's Office on July 16, 2018, as Document No. 1819755158 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated July 10, 2018, from Borrower to Lender (as amended from time to time, the "Indemnity Agreement"); (iv) that certain Security Agreement dated July 10, 2018 executed by Borrower in favor of Lender (the "Security Agreement") and (v) certain other loan documents (the Loan Agreement, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the Security Agreement and 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. The Loan is further secured by a Guaranty dated July 10, 2018 from Guarantor to Lender (the "Guaranty").

D. Borrower and Lender desire to amend the Loan Documents in order to reflect an increase in the Maximum Commitment (as defined in the Loan Documents) and to provide for such other terms and conditions set forth herein.

E. Unless the context requires otherwise, references in this Agreement to Loan Documents shall be deemed to refer to such documents as amended by this Agreement, and such documents and other Loan Documents as may be further amended, modified, extended or replaced from time to time.

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. **Maximum Commitment.** The Maximum Commitment shall be increased from \$1,000,000.00 to \$1,100,000.00. Any reference to One Million and 00/100 Dollars (\$1,000,000.00) as the Maximum Commitment in the Mortgage, the Loan Agreement or any other Loan Document shall mean One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00).

2. **Amendment to Loan Agreement.** The Loan Agreement shall be amended as follows:

(a) The following definitions in Section 1.1 of the Loan Agreement shall be deleted in their entirety and replaced with the following:

"Debt Service. Shall equal the sum of all principal and interest payments on the Loan and any other indebtedness of Borrower that is due and payable during any such calendar year. Debt Service shall be calculated using total principal outstanding, a 30-year amortization schedule and a rate of interest equal to the actual interest rate. Debt service shall be calculated by Lender based on the financial information provided to Lender by Borrower and independently verified by Lender and the calculations so verified shall be final and binding upon Borrower and Lender.

Maximum Commitment: One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00).

Net Operating Income: means, for any period, the difference between (i) the actual cash income received by Borrower from the Premises, consisting of gross rental income from Leases and ancillary income, including expenses reimbursed by tenants, but excluding one-time capital expenditures, security or other deposits, late fees, early lease

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termination or other penalties, and other charges which are reasonably deemed by Lender to be of a non-recurring nature; and (ii) the actual operating expenses related to the Premises, but excepting interest, principal, depreciation and amortization. Net Operating Income calculated to exercise the Extension Option under the Note shall be determined by the Lender in its sole discretion and shall be based on in-place rent roll (annualized for a partial year) less the operating expenses calculated on a trailing twelve (12) month basis, including a five percent (5.0%) management fee and a capital reserve of no less than \$250.00 per unit. Net Operating Income from and after the Initial Maturity Date shall be determined by the Lender in its sole discretion and shall be based on actual annual revenue less operating expenses calculated on a trailing twelve (12) month basis. All calculations shall be made in accordance with generally acceptable accounting principles consistently applied and based on the financial information provided to Lender by Borrower and independently verified by Lender and the calculations so verified shall be final and binding upon Borrower and Lender.”

(b) Section 8.10 of the Loan Agreement shall be deleted in its entirety and replaced with the following:

“8.10 **Debt Service Ratio.** From and after the Initial Maturity Date, Borrower must maintain a Debt Service Ratio of at least 1.25x, tested on an annual basis, in arrears for the immediately preceding year with the first such analysis being for the period ended December 31, 2020.”

3. **Amendment to Mortgage.** Section 37j. 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 **Two Million Two Hundred Thousand and No/100 Dollars (\$2,200,000.00)**; provided, however, in no event shall Mortgagee be obligated to advance funds in excess of the face amount of the Note.”

4. **Amended and Restated Promissory Note.** In connection with this Agreement, Lender requires and Borrower agrees to execute an Amended and Restated Promissory Note, of even date herewith, payable to Lender (the “**Amended and Restated Note**”) which Amended and Restated Note shall amend, modify and replace the Note in its entirety. All references in this Agreement to the “Note” shall hereinafter mean and refer to the Amended and Restated Note and the Amended and Restated Note shall be included in the definition of “Note” herein.

5. **Other Conforming Amendments.** The Loan Documents are hereby amended to reflect the terms of this Agreement including, without limitation, the issuance of the Amended and Restated Note.

6. **Conditions Precedent.** This Agreement shall become effective upon the date on which Lender shall have received:

(a) This Agreement, duly executed and delivered by Borrower;

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(b) The Amended and Restated Promissory Note made payable by Borrower to the order of Lender;

(c) Satisfactory evidence that all corporate and other proceedings that are necessary in connection with this Agreement have been taken to Lender's and its counsel's satisfaction, and Lender and such counsel shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request;

(d) Reimbursement of all fees and expenses of Lender's counsel in connection with this Agreement; and

(e) Such other information and documents as may reasonably be required by Lender and its counsel in connection with this Agreement.

7. **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 under the Note, the Mortgage, 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 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, Guarantor 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.

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8. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement and the issuance of the Amended and Restated Note. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty. In addition, Guarantor hereby expressly and unconditionally waives, releases, and discharges any and all rights or claims under the Illinois Surety Act, 740 ILCS 155/0.01 et. seq. ("Illinois Surety Act"), and further acknowledges and agrees that Lender has no duty or obligation to such Guarantor under the Illinois Surety Act.

9. **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. 18GNW388051SK (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.

10. **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, appraisal fees and attorneys' fees and expenses.

11. **Release of Lender.** In consideration of the Lender's execution of this Agreement as provided below, the Borrower and Guarantor do, on its or his behalf and on behalf of any successors and assigns, hereby fully and forever release, ratify 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 or any Guarantor have, may have had, own or hold, 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.

12. **No Impairment of Lien; No Satisfaction.** Nothing set forth herein shall affect the priority or extent of the lien of the Mortgage or any of the other Loan Documents, nor, except as expressly set forth herein, release or change the liability of any party who may now be or after the date hereof, become liable, primarily or secondarily, under the Loan Documents. This Agreement does not, and shall not be construed to, constitute the creation of new indebtedness or the satisfaction, discharge or extinguishment of the debt secured by the Loan Documents.

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13. Miscellaneous.

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

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor 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 or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor 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, Guarantor 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) Guarantor and Borrower hereby ratify and affirm all of the Loan Documents and all of its, as applicable, respective rights, agreements, obligations, priorities, reservations, promises and waivers as made and agreed and contained therein and as assumed pursuant to this Agreement by Borrower or Guarantor, as the case may be, all of which shall remain in full force and effect.

(g) 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

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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.

(h) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(i) Time is of the essence of each of Borrower's obligations under this Agreement.

(j) The recitals are hereby made a part of this Agreement.

[signature page to follow.]

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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, an Illinois banking association

By: *Kin Curschman*
Name: *Kin Curschman*
Title: *VP*

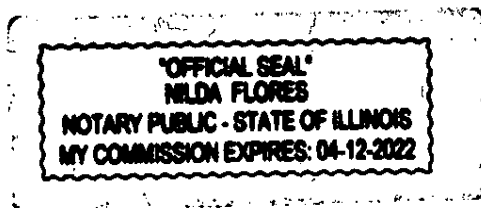
STATE OF *IL*
COUNTY OF *Cook*

I, *Nilda Flores* a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that *Kin Curschman V.P.* of Wintrust Bank, an Illinois banking association, 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, and as the free and voluntary act for said bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this *14* day of *Jun*, 2019.

Nilda Flores
Notary Public

My Commission Expires: *4-12-2022*



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BORROWER:

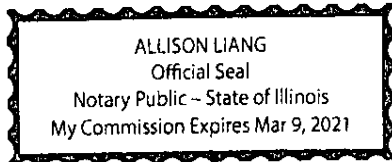
MNA FRONTIER LLC,
an Illinois limited liability company

By: _____
Name: Cullen J. Davis
Its: Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, Allison Liang, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Cullen Davis, Manager of MNA Frontier LLC, an Illinois limited liability company, who is personally known to me to be the same person whose names is subscribed to the foregoing instrument as such Manager, each appeared before me this day in person and each 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 company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 14th day of June, 2019.



[Signature]

Notary Public

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GUARANTOR:

CULLEN J. DAVIS

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, Allison Liang, a Notary Public in and for said County, in the State aforesaid, do hereby certify that CULLEN J. DAVIS, who 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 each acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 14th day of June, 2019.



[Signature]

Notary Public

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EXHIBIT A

THE PROPERTY

THE EAST 50 FEET OF LOTS 27 AND 28 AND THE EAST 50 FEET OF THE NORTH 1/2 OF LOT 26 IN BLOCK 1 IN KEENEY'S AND RINN'S ADDITION TO EVANSTON IN THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 116 W. Keeney St., Evanston, IL 60202

PIN: 11-19-417-003-0000

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