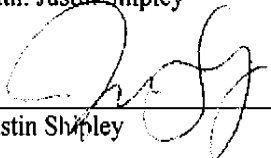


UNOFFICIAL COPY

Doc#: 1930847009 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 11/04/2019 09:31 AM Pg: 1 of 8

This Document Prepared by and
Upon recording, return to:

Jackson Walker L.L.P.
2323 Ross Ave., Suite 600
Dallas, Texas 75201
Attn: Justin Shipley


Justin Shipley

GF#1002-254800IL-RTT

FIRST AMENDMENT TO MORTGAGE

THIS FIRST AMENDMENT TO MORTGAGE (this "Agreement") is executed effective as of October 31, 2019 (the "Effective Date"), by and among **MIDWEST CCC ACQUISITIONS, L.L.C.** a Delaware limited liability company, whose address is 700 N. Pearl Street, Suite N1650, Dallas, Texas 75201, Attn: Clifford A. Booth ("Borrower"), **BANK OF AMERICA, N.A.**, as administrative agent, whose address is 2380 Performance Dr., 3rd Floor Richardson, Texas 75082, Attn: Real Estate Loan Administration ("Administrative Agent"), and the lenders from time to time a party to the Loan Agreement (as defined below) the "Lenders". Capitalized terms used herein, but not otherwise defined herein, shall have the meaning given to such term in the Loan Agreement.

WITNESSETH:

WHEREAS, Lenders made a loan (the "Loan") to Borrower pursuant to that certain Loan Agreement dated as of December 11, 2018 (as amended from time to time, the "Loan Agreement"), by and between Borrower, Administrative Agent and Lenders;

WHEREAS, the Loan was evidenced by that certain Promissory Note as of December 11, 2018 (the "Original Note"), executed by Borrower and payable to the order of Bank of America, N.A., as lender in the original principal amount of \$37,755,000;

WHEREAS, the Loan is secured in part by that certain Mortgage, Assignment of Rents and Leases, Security Agreement, and Fixture Filing dated December 11, 2018 (the "Mortgage"), executed by Borrower to Administrative Agent (for the benefit of Lenders) recorded as Document Number 1834641029 in the Official Public Records of Cook County, Illinois and covering property more particularly described therein, including the land described on Exhibit A, attached hereto (collectively, the "Property");

WHEREAS, Administrative Agent, Lenders, Borrower and Mission Critical Investments LLC, a Delaware limited liability company and Equity Opportunity Fund, LLC, a Delaware limited liability company, formerly Equity Opportunity Fund, Inc., a Delaware corporation, as guarantors, have agreed to increase the amount of the Loan pursuant to that certain First Amendment to Loan Documents (the "Amendment") dated on or about the date hereof. The Loan Agreement, Note, Mortgage, Amendment and all other documents executed in connection with the Loan are referred to herein as the "Loan Documents";

WHEREAS, the Loan is now evidenced by that certain Amended and Restated Promissory Note dated on or about the date hereof (the "Amended Note"), executed by Borrower and payable to the order of Bank of America, N.A., as lender in the original principal amount of \$40,755,000, which has a Maturity Date (as defined in the Amended Note) of December 11, 2023;

UNOFFICIAL COPY

WHEREAS, one of the conditions to the Amendment is the execution of this Agreement.

NOW, THEREFORE, in consideration of the covenants, conditions and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are all hereby acknowledged, Borrower, Administrative Agent and Lenders hereby covenant and agree as follows:

ARTICLE I - AMENDMENTS

Section 1.1. Loan Increase. The Loan is hereby increased to \$40,755,000, and in that regard, all references to the Loan in the Mortgage are hereby modified and amended to reflect such increase.

Section 1.2. Definitions. The following term defined in Section 1.2 of the Mortgage is hereby amended and restated in its entirety as follows:

“Notes”: Those certain Notes executed by Grantor in favor of Lenders in the aggregate principal amount of Forty Million Seven Hundred Fifty-Five Thousand and No/100 Dollars (\$40,755,000), as may be amended, modified, supplemented, restated and replaced from time to time. Additionally, the Notes provide that the principal balance evidenced thereby shall bear interest at a floating rate of interest subject to change from time to time.

ARTICLE II - MISCELLANEOUS

Section 2.1. Default. If any indebtedness, covenant, agreement or condition in this Agreement or in any other Loan Document is not fully and timely paid, performed, observed or kept, and such failure continues beyond any notice, cure or grace period specified in the Loan Agreement or such other Loan Document, such failure shall constitute a Default under the Loan Agreement and the Loan Documents.

Section 2.2. Payment of Expenses. Borrower agrees to pay to Administrative Agent the reasonable attorneys’ fees and expenses of Administrative Agent’s counsel and other expenses incurred by Administrative Agent in connection with this Agreement.

Section 2.3. Binding Agreement. This Agreement shall be binding upon, and shall inure to the benefit of, the parties’ respective representatives, successors and assigns.

Section 2.4. Ratification. Except as otherwise expressly modified by this Agreement, all terms and provisions of the Loan Agreement and the other Loan Documents, including, without limitation, any and all representations and warranties contained therein, shall remain unchanged and hereby are ratified and confirmed and shall be and shall remain in full force and effect, enforceable in accordance with their terms.

Section 2.5. No Defenses. Borrower by its execution of this Agreement, hereby declares that it has no set-offs, counterclaims, defenses or other causes of action against Administrative Agent or Lenders arising out of the Loan, the modification of the Loan, any documents mentioned herein or otherwise; and, to the extent any such setoffs, counterclaims, defenses or other causes of action may exist as of the Effective Date, whether known or unknown, such items are hereby waived by Borrower.

Section 2.6. Further Assurances. The parties hereto shall execute such other documents as may be necessary or as may be required, in the opinion of counsel to Administrative Agent, to effect the transactions contemplated hereby and the liens and/or security interests of all other collateral instruments, as modified by this Agreement. Borrower also agrees to provide to Administrative Agent such other documents and

UNOFFICIAL COPY

instruments as Administrative Agent reasonably may request in connection with the modification of the Loan effected hereby.

Section 2.7. Usury Savings Clause. Notwithstanding anything to the contrary contained in any Loan Document, the interest and fees paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If Administrative Agent or Lenders shall receive interest or a fee in an amount that exceeds the Maximum Rate, the excessive interest or fee shall be applied to the outstanding principal balance of the Indebtedness or, if it exceeds the unpaid principal, refunded to Borrower. In determining whether the interest or a fee contracted for, charged, or received by Administrative Agent or Lenders exceeds the Maximum Rate, such person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Loan.

Section 2.8. Non-Waiver of Events of Default. Except as specifically provided herein, neither this Agreement nor any other document executed in connection herewith constitutes or shall be deemed (a) a waiver of, or consent by Administrative Agent or Lenders to, any default or event of default which may exist or hereafter occur under any of the Loan Documents, (b) a waiver by Administrative Agent or Lenders of any of Borrower's obligations under the Loan Documents, or (c) a waiver by Administrative Agent or Lenders of any rights, offsets, claims, or other causes of action that Administrative Agent or Lenders may have against Borrower.

Section 2.9. Enforceability. In the event the enforceability or validity of any portion of this Agreement, the Loan Agreement or any of the other Loan Documents is challenged or questioned, such provision shall be construed in accordance with, and shall be governed by, applicable federal law or the law of the State of Texas, whichever may be applicable.

Section 2.10. Counterparts. This Agreement may be executed in several counterparts, all of which are identical, each of which shall be deemed an original, and all of which counterparts together shall constitute one and the same instrument, it being understood and agreed that the signature pages may be detached from one or more of such counterparts and combined with the signature pages from any other counterpart in order that one or more fully executed originals may be assembled.

Section 2.11. Choice of Law. THIS AGREEMENT, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH AND PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT REMEDIES PROVIDED BY THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF ILLINOIS ARE GOVERNED BY THE LAWS OF SUCH OTHER JURISDICTION.

Section 2.12. Entire Agreement. This Agreement, together with the other Loan Documents, contain the entire agreements between the parties relating to the subject matter hereof and thereof. This Agreement and the other Loan Documents may be amended, revised, waived, discharged, released or terminated only by a written instrument or instruments, executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

UNOFFICIAL COPY

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL LOAN AGREEMENT BETWEEN THE PARTIES RELATED TO THE SUBJECT MATTER HEREIN CONTAINED AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement is executed effective as of the date first written above.

Address of Borrower:

700 N. Pearl Street, Suite N1650
Dallas, Texas 75201
Attn: Clifford A. Booth
Email: cbooth@westmountrc.com

BORROWER:

MIDWEST CCC ACQUISITIONS, L.L.C.,
a Delaware limited liability company

By: [Signature]
Clifford A. Booth, Vice President

THE STATE OF Texas
COUNTY OF Dallas

§
§
§

This foregoing instrument was acknowledged before me this 28 day of October, 2019, by Clifford A. Booth, Vice President of MIDWEST CCC ACQUISITIONS, L.L.C., a Delaware limited liability company, on behalf of said company.

[Signature]
Notary Public – State of Texas
Serial Number (if any) _____

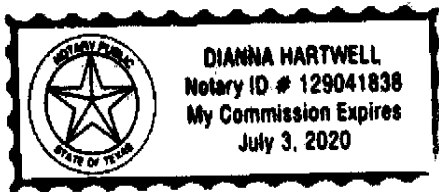
My Commission Expires:
7-3-20

With copy to:

Coats Rose, PC
14755 Preston Road, Suite 600
Dallas, Texas 75254
Attn: David Brusilow, Esq.
Email: brusilow@coatsrose.com

With copy to:

MLG/PF Midwest CCC Investment LLC
19000 W. Bluemound Road
Brookfield, Wisconsin 53045
Attn: Timothy J. Wallen
Email: tjwallen@mlgcompanies.com



The Federal Tax Identification of Borrower is: 83-2402437

UNOFFICIAL COPY

This Document Prepared By
and After Recording Return to:
Jackson Walker L.L.P.
2323 Ross Avenue, Suite 600
Dallas, Texas 75201
Attn: Justin Shipley

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement is executed effective as of the date first written above.

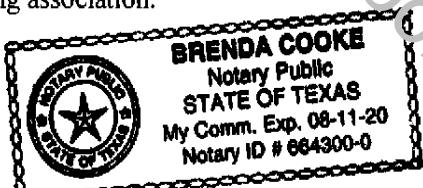
ADMINISTRATIVE AGENT AND LENDER:

BANK OF AMERICA, N.A.,
a national banking association

By: *Casey Blacketer*
Casey Blacketer, Vice President

THE STATE OF Texas §
COUNTY OF Dallas §
§

This foregoing instrument was acknowledged before me this 31st day of October, 2019, by Casey Blacketer, Vice President of Bank of America, N.A., a national banking association, on behalf of said banking association.



Brenda Cooke
Notary Public - State of Texas
Serial Number (if any) 664300-0 Notary ID

My Commission Expires:
August 11, 2020

UNOFFICIAL COPY

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

LOT 1 IN ALSIP PRINCIPAL SUBDIVISION BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS RECORDED APRIL 6, 1992 AS DOCUMENT 92229773.

COMMON ADDRESS: 5111-5151 West 122nd St

PINS: 24-28-202-012-0000

Property of Cook County Clerk's Office