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Edward M. Moody

Cook County Recorder of Deeds

Date: 01/30/2020 01:38 PM Pg: 1 of 12

**THIS DOCUMENT WAS PREPARED BY,
AND AFTER RECORDING, RETURN TO:**

Riley Safer Holmes & Cancila LLP
70 W. Madison Street, Suite 2900
Chicago, Illinois 60602
Attention: Joseph Q. McCoy, Esq.

Property Description

See Exhibit "A"

PIN(s):

See Exhibit "A"

This space reserved for Recorders use only.

FIRST MODIFICATION OF LOAN DOCUMENTS

THIS FIRST MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 15th day of November, 2019 (the "Effective Date"), by **O & S MANAGEMENT, LLC**, an Illinois limited liability company (the "Borrower") and **BMO HARRIS BANK N.A.**, a national banking association, together with its successors and assigns (the "Lender"), and **OCIE WINDHAM**, an individual, and **STEPHANIE WINDHAM**, an individual (together, the "Guarantors" and each a "Guarantor")

RECITALS:

A. Lender made a loan to Borrower in the original principal amount of Three Million Four Hundred Sixty Thousand and No/100 Dollars (\$3,460,000.00) (the "Loan"). The Note (as hereinafter defined) is set to mature on October 17, 2021.

B. The Loan encumbers those certain properties located at 2531-41 E. 73rd Street, Chicago, Illinois and 7200-7210 S. South Shore Drive, Chicago, Illinois, legally described on Exhibit A attached hereto (the "Property").

C. The Loan is evidenced and secured by the following instruments, each dated as of October 17, 2016, unless otherwise noted (collectively, the "Loan Documents"):

(a) Promissory Note made by Borrower in favor of Lender (as amended, restated, or replaced from time to time, the "Note");

(b) Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing made by Borrower for the benefit of Lender, dated as of October 17, 2016,

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encumbering the Property, and recorded in the Cook County, Recorder of Deeds on December 7, 2016 as Document No. 1634206082;

(c) Assignment of Leases and Rents made by Borrower for the benefit of Lender, dated as of October 17, 2016, encumbering the Property, and recorded in the Cook County, Recorder of Deeds on October 24, 2016 as Document No. 1629847125;

(d) Environmental Indemnity Agreement made by Borrower and Guarantors for the benefit of Lender;

(e) Loan Agreement made by Borrower and Lender (as amended, restated or replaced from time to time, the "Loan Agreement");

(f) Guaranty executed by Guarantors for the benefit of Lender;

(g) Collateral Assignment of Property Management Agreement made by Borrower for the benefit of Lender and that certain Consent of Property Manager attached thereto and made by Ocie Windham, an individual, and Stephanie Windham, an individual, for the benefit of Lender; and

(h) Any and all other documents and instruments given at any time to evidence and secure the Loan.

D. The parties desire to amend the Loan Documents as based upon the terms set forth herein.

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. Definitions. All terms not otherwise defined herein shall have the meaning ascribed to such term in the Loan Agreement.

2. Principal Balance of the Loan. As of the Effective Date, the principal balance of the Loan is Three Million Two Hundred Fifty Six Thousand Nine Hundred Thirty One and 96/100 Dollars (\$3,256,931.96). All references to the Loan in the Loan Documents shall mean Three Million Two Hundred Fifty Six Thousand Nine Hundred Thirty One and 96/100 Dollars (\$3,256,931.96).

3. Financial Statements. The Borrower represents and warrants that the financial statements for the Borrower and each Guarantor previously submitted to the Lender are true, complete and correct in all material respects, disclose all actual and contingent liabilities of the

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Borrower or Guarantors and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the financial condition of the Borrower or any Guarantor from the dates of said financial statements until the date hereof. The Borrower shall furnish to the Lender such financial information regarding the Borrower and the Guarantors as the Lender may from time to time reasonably request, in form, scope and detail satisfactory to the Lender.

4. Amendment of the Loan Agreement. As of the Effective Date, the Loan Agreement is hereby modified as set forth below:

(a) The definition of "Debt Service" in Section 1.1. is hereby deleted in its entirety and replaced with the following:

"**Debt Service**" shall mean: (a) for the Debt Service Coverage Ratio test occurring on June 30th of each calendar year, a calculation of principal and interest payments due under the Loan Documents for the succeeding six (6) month period based upon the Loan Amount using a thirty (30) year amortization schedule and an interest rate equal to the greatest of (i) the actual Interest Rate, and (ii) five percent (5.0%) per annum; or (b) in all other instances, a calculation of principal and interest payments due under the Loan Documents for the succeeding twelve (12) month period based upon the Loan Amount using a thirty (30) year amortization schedule and an interest rate equal to the greatest of (i) the actual Interest Rate, and (ii) five percent (5.0%) per annum."

(b) Section 4.1.27. is hereby deleted in its entirety and replaced with the following:

"**Sec. 4.1.27. Debt Yield.** Within forty-five (45) days following December 31st of each calendar year, Borrower shall submit a certificate showing a Debt Yield computation for the preceding annual period of at least eight and one half percent (8.5%) (the "**Debt Yield Requirement**"). Borrower's calculation of the Debt Yield shall be subject to verification by Lender and modification by Lender if Lender determines, in its reasonable discretion, that such calculation is incorrect or fails to comply with this Agreement (to be exercised by written notice to Borrower). In the event Borrower fails to achieve the Debt Yield Requirement, Borrower shall, within ten (10) days following written notice from Lender, establish an account (the "**Cash Flow Account**") with Lender and shall deposit into said Cash Flow Account a sum that, if added to the actual cash flow of the Property, would satisfy the Debt Yield Requirement (the "**Debt Yield Funds**"). The Debt Yield Funds shall be held in the Cash Flow Account pursuant to a Deposit Account Pledge and Control Agreement, the form of which is attached hereto as Exhibit B (the "**Debt Yield DAPCA**"). The Debt Yield Funds shall serve as collateral for the Loan unless and until the Borrower provides evidence Lender showing that the Property achieves the Debt Yield Requirement (as determined by Lender and as tested as of December 31st of each calendar year). In the event the Debt Yield Requirement is achieved as of the applicable testing date, the Debt Yield Funds shall be released to Borrower.

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If the Debt Yield exceeds that of the prior testing date, but still falls below the Debt Yield Requirement, the Debt Yield Funds shall remain in the Cash Flow Account.

If the Debt Yield falls below that of the prior testing date, Lender may require an additional sum that, if added to the actual cash flow of the Property and the existing Debt Yield Funds, would satisfy the Debt Yield Requirement.”

5. Amendments to the Loan Documents. All Loan Documents are hereby amended to the extent necessary to be consistent with the foregoing amendments as stated herein.

6. Covenant Waiver. Borrower acknowledges and agrees that it failed to achieve a Debt Yield of at least 8.5 as tested on June 30, 2019 and as required by Section 4.1.27 of the Loan Agreement. Borrower further acknowledges and agrees that it failed to achieve a Debt Service Coverage Ratio of at least 1.3 as tested on June 30, 2019 and as required by Section 4.1.25 of the Loan Agreement. Such Debt Yield covenant and Debt Service Coverage Ratio covenants shall be waived for the tests occurring on June 30, 2019.

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 and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default or Default under the Note, the Loan Agreement 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 Loan Agreement 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 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 its obligations under 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

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behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

8. Reaffirmation of Guaranty. Each Guarantor hereby ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of each Guarantor in the Guaranty are, as of the date hereof, true and correct and no Guarantor knows of any default thereunder. The Guaranty continues to be the valid and binding obligation of each Guarantor, enforceable in accordance with its terms and no Guarantor has any claims or defenses to the enforcement of the rights and remedies of Lender thereunder.

9. 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.

10. Notices. Any notices, communications and waivers under this Agreement and the Loan Documents shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) delivered by overnight express carrier; addressed in each case as set forth in the Loan Documents, except that all notices to Lender shall be delivered to the address set forth below:

To Lender: BMO Harris Bank N.A.
111 West Monroe Street, 5E
Chicago, Illinois 60603
Attention: Jerry Lunkins

with a copy to:

BMO Harris Bank N.A.
111 West Monroe Street
Chicago, Illinois 60603
Attention: Portfolio Manager/
2531-41 E. 73rd Street & 7200-7210 S. South Shore Drive,
Chicago, Illinois

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

11. Miscellaneous.

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(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 merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower 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 nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower and Lender each acknowledges 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 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) Any references to the "Note", the "Loan Agreement", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Loan Agreement 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 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.

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

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

12. Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act. Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Lender to identify Borrower in accordance with the Act. In addition, Borrower shall (a) ensure that no person who owns a controlling interest in or otherwise controls Borrower or any subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

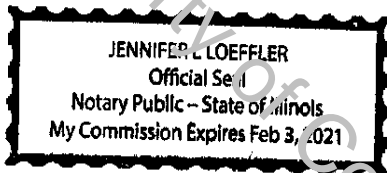
[Remainder of page intentionally left blank; signature page follows]

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STATE OF Illinois)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **OCIE WINDHAM**, in his/her capacity as Member of the above entity, 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 acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal as of the 01st day of January, 2020



Jennifer L. Loeffler
NOTARY PUBLIC
(SEAL)

My Commission Expires: 2/3/2021

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GUARANTOR ACKNOWLEDGEMENT

GUARANTOR:

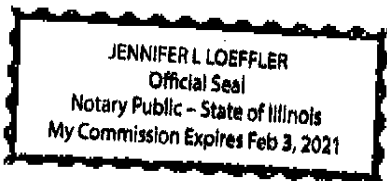
STEPHANIE WINDHAM, an individual

Stephanie Windham

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **STEPHANIE WINDHAM**, an individual, 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 acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal as of the 07th day of January, 2020



Jennifer L. Loeffler
NOTARY PUBLIC
(SEAL)

My Commission Expires: 2/3/2021

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GUARANTOR ACKNOWLEDGEMENT

GUARANTOR:

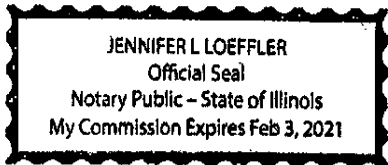
OCIE WINDHAM, an individual

OCIE WINDHAM

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that OCIE WINDHAM, an individual, 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 acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal as of the 9th day of January 2020



Jennifer L Loeffler
NOTARY PUBLIC
(SEAL)

My Commission Expires: 2/3/2021

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EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Parcel 1:

Lot 26 (except the Westerly 76 feet thereof) and the North 50 feet of Lot 29 (except the West 76 feet thereof) in Division 3 of South Shore Subdivision of North Fractional Half of Section 30, Township 38 North, Range 15 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

Lot 110 (Except the Southerly 65 feet) and all of Lot 111 in Division 3 in South Shore Subdivision of the North Fractional One-Half of Fractional Section 30, Township 38 North, Range 15 East of the Third Principal Meridian, in Cook County, Illinois.

Common Property Address: 2531-41 E. 73rd Street, Chicago, Illinois and 7200-7210 S. South Shore Drive, Chicago, Illinois

PIN: 21-30-112-003-0000 and 21-30-107-016-0000