

This instrument prepared by and return to:
Kenneth P. Wurtenberger, Esq.
Shahady & Wurtenberger, P.A.
7900 Peters Road, Suite B-200
Fort Lauderdale, FL 33324

NOTICE OF FUTURE ADVANCE AND
MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY
AGREEMENT MODIFICATION AGREEMENT

THIS NOTICE OF FUTURE ADVANCE AND MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT MODIFICATION AGREEMENT (hereinafter referred to as the "Modification Agreement") is made as of July 30, 2021 by **613 NW 3RD AVE, LLC**, a Florida limited liability company ("Borrower" or "Mortgagor") with an address of 414 N. Andrews Avenue, Fort Lauderdale, FL 33301 and **CITY NATIONAL BANK OF FLORIDA** ("Lender") with an address of 25 West Flagler Street, Miami, FL 33130.

RECITALS

WHEREAS, Lender has made a loan to Mortgagor (the "Loan") evidenced by a Promissory Note dated April 4, 2019 from Mortgagor to Lender in the aggregate original principal amount of Nineteen Million Two Hundred Seventy-Four Thousand and 00/100 Dollars (\$19,274,000.00) ("Original Note"), which Original Note is secured by that certain Mortgage, Assignment of Rents and Security Agreement given by Borrower in favor of Lender, recorded as Instrument Number 115720898 in the Public Records of Broward County, Florida (the "Original Mortgage");

WHEREAS, the Original Mortgage presently encumbers and constitutes a valid first mortgage lien in and to the real property legally described in the Original Mortgage secured by the property described on Exhibit "A" attached hereto and made a part hereof (the "Property") and the Improvements constructed thereon (the "Improvements");

WHEREAS, Borrower has requested a future advance loan under the Mortgage in the principal amount of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00), which is evidenced by that certain Amended, Restated and Increased Promissory Note dated of even date herewith by Mortgagor in favor of Lender ("Amended Promissory Note"), and as a

NOTE TO RECORDER: THIS NOTICE OF FUTURE ADVANCE AND MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT MODIFICATION AGREEMENT AMENDS WITH NO CHANGE IN MORTGAGOR/OBLIGOR THAT CERTAIN MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT, DATED APRIL 4, 2019, FROM MORTGAGOR IN FAVOR OF LENDER, THE ORIGINAL OF WHICH IS RECORDED AS INSTRUMENT NUMBER 115720898 IN THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA (THE "ORIGINAL MORTGAGE"). THIS MODIFICATION ALSO EVIDENCES A FUTURE ADVANCE IN THE AMOUNT OF \$2,500,000.00 (THE "FUTURE ADVANCE") FOR A TOTAL OUTSTANDING INDEBTEDNESS OF \$21,774,000.00. DOCUMENTARY STAMP TAX AND NONRECURRING INTANGIBLE TAXES BASED UPON A LOAN AMOUNT OF \$19,274,000.00 WAS PAID WITH RESPECT TO THE DEBT SECURED BY THE ORIGINAL MORTGAGE, UPON THE RECORDATION THEREOF. DOCUMENTARY STAMP TAXES OF \$8,750.00 AND NONRECURRING INTANGIBLE TAXES OF \$5,000.00 IS DUE IN CONNECTION WITH THE FUTURE ADVANCE.

condition of the Future Advance (as hereinafter defined), Lender has required that certain modifications be made to the loan documents executed in connection with the Original Note and the Original Mortgage (the Original Mortgage as modified by this Modification Agreement is referred to as the "Mortgage") and the original Loan Agreement; and

WHEREAS, Borrower is indebted to Lender in the aggregate principal amount of TWENTY-ONE MILLION SEVEN HUNDRED SEVENTY-FOUR THOUSAND AND 00/100 DOLLARS (\$21,774,000.00), together with interest thereon, as evidenced by the Amended Promissory Note;

WHEREAS, the parties wish to modify the terms of the Loan Documents as hereinafter set forth.

NOW, THEREFORE, in consideration of Lender's agreement to provide the Future Advance, Borrower's execution of certain other loan documents and the mutual covenants contained herein, the receipt of which is hereby acknowledged, the parties acknowledge and agree as follows:

1. Incorporation by Reference. The recitals set forth above are incorporated herein and made a part hereof and are true and correct.

2. Costs and Expenses. All costs and expenses in connection with the Future Advance and modification of the Loan, including Lender's attorneys' fees and costs and recording fees and costs (collectively, the "Fees and Costs") shall be paid by Borrower.

3. Future Advance. Borrower hereby acknowledges Lender's agreement to provide for the future advance in the sum of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) ("Future Advance") under the Original Mortgage. The Future Advance is evidenced by the Amended Promissory Note in the amount \$21,774,000.00. The Mortgage and Assignment of Leases is modified hereby to secure the Original Note and the Amended Promissory Note as part of the indebtedness secured by the Mortgage and Assignment of Leases, with the same force and priority as the Mortgage and Assignment of Leases secured the debt as originally described therein.

4. Modifications to Original Mortgage. The Original Mortgage is hereby further modified as follows:

A. The defined term "Note," as used in the Original Mortgage, shall now refer to the Amended Promissory Note (the Amended Promissory Note, this Modification Agreement, the Original Mortgage, the Construction Loan Agreement dated April 4, 2019, (the "Loan Agreement"), and any and all other loan documents executed in connection with the Loan, as modified herein are referred to as the "Loan Documents").

5. Representations and Warranties. Borrower hereby warrants and represents to Lender the following:

(a) After giving effect to this Agreement, Borrower is in compliance with all of the provisions of the Mortgage, the Loan Agreement and the Loan Documents and all of the other documents executed in connection therewith and herewith and that no default has occurred thereunder nor has any event occurred or failed to occur which with the passage of time or the giving of notice or both would comprise such a default.

(b) There are no offsets, counterclaims or defenses against the indebtedness evidenced by the Note, the Mortgage, the Loan Agreement and/or the Loan Documents, as each is modified hereby.

(c) Mortgagor has full power, authority and legal right to execute this Agreement and to keep and observe all of the terms of this Agreement to be observed or performed by Mortgagor.

(d) There are no actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or the Property which could have a material adverse effect on Borrower or the Property or involving the validity or enforceability of the documents executed in connection with the Mortgage or the priority of the lien thereof, at law or in equity, and Borrower is not operating under, or subject to, or in default of, or in violation with respect to, any order, writ, injunction, decree or demand of any court or any governmental authorities.

(e) Borrower reaffirms its obligations under the Loan Documents, as modified hereby.

(f) This Agreement is not being made or entered into with the actual intent to hinder, delay, or defraud any entity or person, and the Borrower and Guarantor (as defined in the Loan Documents) are each solvent and not bankrupt. Except as specifically provided in this Agreement, no express or implied consent to any further forbearance or modifications involving any of the matters set forth in this Agreement or otherwise shall be inferred or implied by Lender execution of this Agreement or any other action of Lender.

(g) This Agreement is not intended by the parties to be a novation of the Loan Documents and, except as expressly modified herein, all terms, conditions, rights and obligations as set out in the Loan Documents are hereby reaffirmed and shall otherwise remain in full force and effect as originally written and agreed.

(h) No action or proceeding, including, without limitation, a voluntary or involuntary petition for bankruptcy under any chapter of the Federal Bankruptcy Code, has been instituted or threatened by or against Borrower or any Guarantor.

(i) The execution of this Agreement by Mortgagor and the performance by Mortgagor of its obligations hereunder will not violate or result in a breach or constitute a default under any agreements to which any of them is a party.

(j) All information provided by Borrower and Guarantor to Lender prior to the date hereof, including, without limitation, all financial statements, balance sheets, and cash flow statements, was, at the date of delivery, and is, as of the date hereof, true and correct in all material respects. Borrower recognizes and acknowledges that Lender is entering into this Agreement based in part on the financial information provided to Lender by Borrower and Guarantor and that the truth and correctness of that financial information is a material inducement to Lender in entering into this Agreement. During the term of this Agreement, Borrower agrees to advise Lender promptly in writing of any and all new information, facts, or occurrences which would in any way materially supplement, contradict, or affect any financial statements, balance sheets, cash flow statements, or similar items furnished to Lender.

6. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Paragraph or section headings used herein are for convenience only and shall not be used to interpret any term hereof. The Mortgage and the Loan Documents shall continue in full force and effect as modified by this Agreement. In the event that the terms of this Agreement conflict with the terms of the Mortgage and/or the Loan Documents, as the case may be, the terms of this Agreement shall control. This Agreement may not be modified, amended, changed or terminated orally, but only by an agreement in writing signed by the party against whom the enforcement of the modification, amendment, change or termination is sought. If any term, covenant or condition of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

(b) This Agreement constitutes the entire agreement among the parties hereto and supersedes all prior agreements, understandings, negotiations and discussions, both written and oral among the parties hereto with respect to the subject matter hereof, all of which prior agreements, understandings, negotiations and discussions, both written and oral, are merged into this Agreement. Except as hereinabove specifically modified, all other provisions of the Mortgage and the Loan Documents, as may be modified in connection with this Agreement, shall remain unchanged and in full force and effect. Without limiting the generality of any of the provisions of this Agreement, nothing herein or in any other instrument or agreement shall be deemed or construed to constitute a novation, satisfaction or refinancing of all or any portion of the loan evidenced by the Note, or in any manner affect or impair the lien or priority of the Mortgage or the Loan Documents, as each has been modified hereby.

(c) This Agreement may be executed in any number of counterparts with each executed counterpart constituting an original, but altogether constituting but one and the same instrument.

(d) This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, legal representatives, executors, successors and assigns.

7. WAIVER OF JURY TRIAL. MORTGAGOR AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED

HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY AGREEMENT EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS BY ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER ENTERING INTO THIS AGREEMENT AND MAKING ANY LOAN, ADVANCE OR OTHER EXTENSION OF CREDIT TO BORROWER. FURTHER, MORTGAGOR HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF LENDER, NOR LENDER'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. NO REPRESENTATIVE OR AGENT OF LENDER, NOR LENDER'S COUNSEL HAS THE AUTHORITY TO WAIVE CONDITION OR MODIFY THIS PROVISION.


[SIGNATURE PAGES FOLLOW]

[BORROWER SIGNATURE PAGE TO NOTICE OF FUTURE ADVANCE AND
MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT
MODIFICATION AGREEMENT]

IN WITNESS WHEREOF, Mortgagor and Lender have executed this Modification Agreement
on the date specified above.

WITNESSES:


Print Name: Adam Link


Print Name: Chris Smith

BORROWER:

613 NW 3RD AVE, LLC, a Florida limited liability
company

By: The Six13 Developer, LLC, a Florida limited
liability company, its Manager

By: 613 Developer AFCO LLC, a Florida limited
liability company, its Manager

By: 
Jeffrey Burns, Manager


STATE OF FLORIDA)
 : SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 27 day of July, 2021, by Jeffrey Burns,
Manager of 613 Developer AFCO LLC, a Florida limited liability company, on behalf of the company by means
of ☒ physical presence or ☐ online notarization. He ☒ is personally known to me or ☐ has produced
a driver's license as identification.

[Notary Seal]



Notary Public:


Sign: _____
Print Name: Michelle A Rice
My Commission Expires: 11-13-2021

[LENDER SIGNATURE PAGE TO NOTICE OF FUTURE ADVANCE AND MORTGAGE,
ASSIGNMENT OF RENTS AND SECURITY AGREEMENT MODIFICATION
AGREEMENT]

WITNESSES:

Nedley Archettus
Print Name: Nedley Archettus

Rajpati Persaud
Print Name: Rajpati Persaud

LENDER:

CITY NATIONAL BANK OF FLORIDA, a
national banking corporation

By: David Albright
David Albright, Senior Vice-President

STATE OF FLORIDA)
COUNTY OF Palm Beach : SS

The foregoing instrument was acknowledged before me this 14 day of July, 2021,
by David Albright, Senior Vice-President of City National Bank of Florida, a national banking
association, on behalf of the company by means of ☒ physical presence or ☐ online notarization.
He ☒ is personally known to me or ☐ has produced a driver's license as identification.

[Notary Seal]

Notary Public:

Sign: Rajpati Persaud
Print Name: Rajpati Persaud
My Commission Expires: 04/23/23

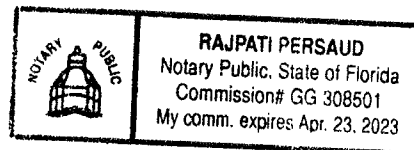


EXHIBIT "A"
LEGAL DESCRIPTION

LOTS 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31 and 32, BLOCK 322, of Progresso, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; together with Lot 25, Block 322, Less that portion thereof described as follows:

Begin at the Southeast corner of said Lot 25; thence go Westerly 135.0 feet along the South line thereof to the Southwest corner of said Lot 25; thence Northerly along the West line thereof 22.55 feet (22.50 feet calculated) to the tangent point of a circular arc having a radius of 10 feet and being concave to the Northeast; thence Southerly to Easterly along said arc 15.71 feet through a central angle of 90 degrees 00' to the end of said arc; thence Easterly and tangent to said arc along a line being 35 feet North of and parallel to the South boundary of the North 1/2 of Section 3, Township 50 South, Range 42 East, 125.0 feet to the East line of said Lot 25; thence Southerly 12.60 feet (12.50 feet calculated) along said East line to the Point of Beginning.

All Being in Block 322 of Progresso, according to the Plat thereof, recorded in Plat Book 2, at Page 18, of the Public Records of Miami-Dade County, Florida, said lands lying and being in Broward County, Florida.