

Title documents

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**20220964719**



Pages:  
0010

Recorded/Filed in Official Records  
Recorder's Office, Los Angeles County,  
California

10/05/22 AT 08:00AM

FEES:	68.00
TAXES:	0.00
OTHER:	0.00
SB2:	150.00
PAID:	218.00



LEADSHEET



202210051030016

00022820394



013703223

SEQ:  
01

SECURE - 8:00AM



THIS FORM IS NOT TO BE DUPLICATED

343062

Recording Requested By:

## Fidelity-Sherman Oaks

WHEN RECORDED, RETURN TO: *FNT*

Crosswind QRS I  
10960 Wilshire Boulevard, Suite 1050  
Los Angeles, California 90024

Property ID No: 2049-002-030

### *343062* MODIFICATION OF NOTE AND DEED OF TRUST AGREEMENT

This Modification of Note and Deed of Trust Agreement (this "Agreement") is effective as of September 30, 2022, and is by and between Crosswind QRS I, a California Corporation ("Lender"), holder of all beneficial interest in the Note and Security Instrument described below; and 5510 Jed Smith Rd. LLC, a California Limited Liability Company ("Borrower"), the fee owner of the real property known as 5510 Jed Smith Road, Hidden Hills, California 91302 (the "Property"), as more fully described in Exhibit "A," attached to this Agreement and incorporated herein by reference.

#### RECITALS

A. Lender made a loan to Borrower in the original principal amount of Nine Million Six Hundred Thousand and 00/100 Dollars (\$9,600,000.00) which is evidenced by that certain Secured Note (the "Note") dated March 28, 2022 and that certain Loan and Security Agreement dated March 28, 2022 (the "Loan Agreement"). The Note is secured by that certain Deed of Trust, Assignment of Leases and Rents, Fixture Filing, and Security Agreement dated March 28, 2022, and recorded on March 31, 2022 in first priority position in the Official Records of the County of Los Angeles, State of California as Instrument Number 20220359035 (the "Security Instrument"). The Maturity Date of the Note is October 1, 2023 (the "Maturity Date"); and the unpaid principal balance and accrued interest are due and payable to Lender on such date.

B. The Note, Loan Agreement, and Security Instrument are referred to collectively herein as the "Loan." The Note, Loan Agreement, Security Instrument, this Agreement, and all other loan documents signed in connection with the Loan, including, but not limited to, this Agreement are collectively referred to herein as the "Loan Documents."

C. Borrower now requests, and Lender agrees to an advance of funds in the amount of Nine Hundred Thousand and 00/100 Dollars (\$900,000.00) ("Additional Principal"), subject to the terms provided herein. Accordingly, Borrower and Lender have agreed to modify the Loan as set forth in the Terms below.

#### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

**1. Reaffirmation of Obligations.** Borrower promises to pay the indebtedness evidenced by the Note as hereby amended and to perform each and all of the conditions and covenants required to be performed by Borrower pursuant to the Loan Documents. Borrower further represents and warrants that it has no defenses or claims against Lender that would or might affect the enforceability of the Loan, including this Agreement, and that the Loan and documents that were executed in connection therewith remains in full force and effect, unless specifically modified herein.

2. **Affirmation of Unpaid Principal Balance.** Borrower understands, acknowledges, and agrees that as of September 30, 2022, the unpaid principal balance of the Loan is Nine Million Six Hundred Thousand and 00/100 Dollars (\$9,600,000.00) ("Unpaid Principal Balance"), exclusive of accrued and unpaid interest, late charges, attorneys' fees and costs, and other fees and costs pursuant to the terms of the Loan.

2.1 **Affirmation of Outstanding Construction Reserve Balance.** Borrower understands, acknowledges, and agrees that as of September 30, 2022, the outstanding Construction Reserve balance is Zero and 00/100 Dollars (\$0.00) ("Construction Reserve Balance").

3. **Affirmation of Business Purpose of Loan.** Borrower represents and warrants to Lender that the proceeds of the Note have been and will continue to be used solely for business, commercial investment, or similar purposes, and that no portion of it will be used for personal, family, or household purposes. Further, if any additional proceeds shall be distributed to Borrower through this Agreement that the proceeds shall solely be used for business or commercial use.

BORROWER'S INITIALS:

T.D  
[TD]

4. **Fees.** As consideration for Lender's modification of the Loan, Borrower agrees to pay the following fees, in addition to the fees and costs identified in Section 6.1 of this Agreement:

Fee	Fee Amount	Paid To:	When Paid
Modification Fee	\$9,000.00	Arixa Capital Corporation (Trustee for Loan Servicing Trust Account)	Deliver to Lender's Address
Processing Fee	\$1,295.00	Arixa Capital Corporation (Trustee for Loan Servicing Trust Account)	Deliver to Lender's Address

5. **Modifications to Loan.** The Note, Security Instrument and Loan are modified as follows:

5.1 **Increase in Interest Rate.** The interest rate due under the Note shall increase from Six and 750/1000 Percent (6.750%) per annum to Eight and 250/1000 Percent (8.250%) per annum ("New Interest Rate").

5.2 **New Principal Balance.** The new principal balance of the Loan shall be Ten Million Five Hundred Thousand and 00/100 Dollars (\$10,500,000.00) ("New Principal Balance"). The New Principal Balance is comprised of the Unpaid Principal Balance plus the Additional Principal.

5.3 **New Monthly Interest Payments.** Interest only payments at the New Interest Rate shall be due and payable in consecutive monthly installments of Seventy-two Thousand One Hundred Eighty-seven and 50/100 Dollars (\$72,187.50). Such payments shall continue until the entire indebtedness evidenced by the Note and Security Instrument and all accrued and unpaid interest and fees are fully paid, with any unpaid principal and interest due and payable on the Maturity Date.

5.4 **Interim Month Interest.** Interest accruing during the month of October 2022 shall be paid to Lender on November 1, 2022 and prorated based on the applicable interest rate during the month. As such, interest shall accrue on the Unpaid Principal Balance at an interest rate of Six and 750/1000 Percent (6.750%) from October 1, 2022 through the date of this Agreement, and shall accrue on the Unpaid Principal Balance at a rate of Eight and 250/1000 Percent (8.250%) from the date of this Agreement through October 30, 2022.

5.5 **New Balloon Payment.** The new Balloon Payment amount due on the New Maturity Date shall be Ten Million Five Hundred Seventy-two Thousand One Hundred Eighty-seven and 50/100 Dollars (\$10,572,187.50), which is comprised of the Unpaid Principal Balance plus the unpaid interest in the amount of Seventy-two Thousand One Hundred Eighty-seven and 50/100 Dollars (\$72,187.50) for interest accruing during the month prior to the New Maturity Date, and any unpaid late charges, accrued unpaid

interest or other unpaid amounts due under the Note or Security Instrument (collectively, the "New Balloon Payment"). The New Balloon Payment is more than double the amount of the regular payments. There shall be no grace period for Borrower to pay the New Balloon Payment, which shall be due and payable in full on the Maturity Date.

**5.6 Replenishment of Construction Reserve.** Out of the Additional Principal, Lender shall withhold Nine Hundred Thousand and 00/100 Dollars (\$900,000.00) to replenish the Construction Reserve, which funds shall be added to the Construction Reserve Balance. The new balance of the Construction Reserve is \$900,000.00. The funds held in the Construction Reserve shall be distributed in accordance with the terms of the Construction Reserve provided in the Loan Documents.

**5.7 Decrease in Draw Reimbursement Rate.** The draw reimbursement rate reflected in Section 2.8.1 of the Loan Agreement shall decrease from **80.00% of the approved draw amount to 75.00% of the approved draw amount.**

**6. Conditions Precedent.** The following are conditions precedent to the effectiveness of this Agreement:

**6.1 Fees & Costs of Loan Modification.** Borrower has agreed to pay the fees and costs associated with this Agreement, inclusive of any required endorsements to Lender's Policy of Title Insurance; the recording fees charged by the County of Los Angeles; notary fees; all escrow fees inclusive of messenger and handling fees; the Modification Fee; all title fees; and all outstanding property taxes.

**6.2 Payment of Property Taxes.** Borrower shall deliver to Lender written documentation confirming that the property taxes are current and that there are no outstanding property taxes due. Borrower covenants and agrees to pay any and all future installments of property taxes on or before the due date.

**6.3 Evidence of Insurance.** Borrower must deliver to Lender, or to Lender's agent, a copy of the hazard insurance policy on the Property which names Lender as a mortgagee to the satisfaction of Lender. The hazard insurance must cover the replacement value of the improvements on the Property.

**6.4 Compliance with Loan.** The Borrower is current and no event of default has occurred under the Note, the Security Instrument, or other Loan Documents

**6.5 No Further Liens Recorded.** There have been no further encumbrances or liens recorded against the Property, including but not limited to, mechanic's liens. Unless otherwise expressly waived by Lender in writing, Borrower shall provide Lender with copies of lien releases and evidence of payment to any person or entity that provided services or labor for any construction related work at the Property.

**6.6 Reaffirmation of Guaranty.** A Reaffirmation of Guaranty ("Reaffirmation of Guaranty") shall be signed by Guarantor, Tzvika Diner, and the original fully executed Reaffirmation of Guaranty shall be delivered to Lender.

**7. Confirmation of Property and Security Instrument.** Borrower hereby acknowledges, agrees, and confirms that all obligations of Borrower to Lender under the Note are secured by a perfected first priority security interest in the Property. Borrower further acknowledges, agrees and confirms that Borrower's obligations to Lender under the Note are secured by the Security Instrument.

BORROWER'S INITIALS:

T.D  
[TD]

**8. Other Provisions in Full Force.** Except as specifically provided herein, the Note, the Security Instrument and the other loan documents shall remain in full force and effect in accordance with their original terms and conditions, including, without limitation, those provisions providing for the acceleration of the indebtedness evidenced by the Note.

**9. Release of Lender.** As additional consideration for Lender's extension of the term of the Loan as set forth above, Borrower, on Borrower's own behalf and on behalf of Borrower's respective representatives, beneficiaries, agents, attorneys, heirs, relatives, administrators, partners and anyone acting at Borrower's direction or on Borrower's behalf, does hereby relieve, release, discharge and forever

hold harmless Lender and its respective past and present owners, officers, directors, shareholders, investors, representatives, beneficiaries, joint venturers, partners, employees, former employees, managers, accountants, agents, servants, attorneys, benefit plans, insurers, transferees, predecessors in interest, successors, assigns, parent companies, divisions, affiliates and subsidiaries (and owners, stockholders, predecessors, successors, assigns agents, directors, officers, employees, representatives, attorneys, benefit plans and insurers of such parent companies, divisions, subsidiaries and affiliates), and each of them individually and in their official capacities, and all persons acting by, through, under or in concert with any of them from any and all liability, demands, causes of action, accountings or claims of any nature arising out of the advertising, negotiation, disclosure, underwriting, processing, making, settlement, servicing or any other aspects of the relationship between the parties concerning the Loan, known or unknown, suspected or unsuspected, arising since the Loan was applied for to the present, including claims under State Real Estate Law and all state and federal statutory, regulatory or case law, but excluding obligations created in this Modification Agreement and the on-going obligations under the Loan. Borrower acknowledges that such release includes a waiver of the right to make claims based upon the discovery of new facts and circumstances, and waives the application of any state or federal laws providing for relief from general releases.

Borrower hereby waives any provisions of state or federal law which explicitly or implicitly would prevent the application of this Modification Agreement to claims which Borrower does not know or suspect to exist in its favor any time on or prior to the date of executing this Modification Agreement which, if known by Borrower, would have materially affected Borrower's decision to execute this Modification Agreement. Borrower expressly waives all rights afforded by any statute with respect to unknown claims, including, but not limited to, Section 1542 of the California Civil Code which limits the effect of a release with respect to unknown claims. Borrower understands the significance of the release of unknown claims and the waiver of statutory protection against a release of unknown claims (such as under Section 1542). Section 1542 of the California Civil Code reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Notwithstanding the above-stated provisions of Section 1542 and for purposes of implementing a full and complete release and discharge, Borrower expressly acknowledges that this Modification Agreement is specifically intended to include in its effect, without limitation, all claims which Borrower has but does not or may not know or suspect to exist in its favor at any time on or prior to the date of execution of this Modification Agreement, and that this Modification Agreement extinguishes any and all such claim(s) and Borrower indicates that fact by signing its initials here:

**BORROWER'S INITIALS:**

  T.D.    
[TD]

**10. Binding Effect.** This Agreement shall bind and benefit the heirs, successors, and assigns of Borrower and Lender, respectively.

**11. Governing Law.** This Agreement is made by the Lender and accepted by the Borrower in the State of California except that at all times the provisions relating to the perfection, priority, enforcement and foreclosure of the liens and security interests in the Property under the Loan Documents shall be governed by and construed according to the laws of California. To the fullest extent permitted by the law of California, the law of the State of California shall govern the validity and enforceability of all Loan

Documents, and the debt or obligations arising hereunder (but the foregoing shall not be construed to limit Lender's rights with respect to such security interest under the laws of the State of California).

12. **Modification Only In Writing.** Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated, except by a subsequently executed instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge or termination is sought.

13. **Construction/Severability.** If any provision of this Agreement shall be determined to be invalid, void or illegal, such provision shall be construed and amended in a manner which would permit its enforcement but in no event shall such provision effect, impair or invalidate any other provision hereof.

14. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original. This Agreement shall be deemed fully executed and effective when all Parties have executed at least one of the counterparts, even though no single counterpart bears all such signatures.

15. **Advice of Counsel.** The Parties hereby represent that they have been advised of the effect of this Agreement by their own attorneys, or that they have had the opportunity to consult with an attorney of their choosing, have investigated the facts and are not relying upon any representation or acknowledgment, whether oral or in writing, of any other party hereto except as contained herein. Further, the Parties expressly waive any right to rescind this Agreement.

16. **Further Assurances.** The Parties hereto agree to perform such acts and to prepare, execute, and record any documents or stipulations reasonably required to perform the covenants, to satisfy the conditions herein contained, or to give full force and effect to this Agreement.

17. **Successor and Third Parties.** Each covenant set forth in this Agreement shall inure to the benefit of and be binding upon the Parties and each of their respective owners, heirs, successors, shareholders, officers, directors, assigns, attorneys, agents, employees, employers, representatives (past and present).

18. **Meaning of Pronouns and Effect of Captions.** As used in this Agreement, the masculine, feminine and/or neuter gender, in the singular or plural, shall be deemed to include the others whenever the text so requires. Captions and paragraph headings are inserted solely for convenience and shall not be deemed to restrict or limit the meaning of text.

19. **No Waiver.** No failure to exercise and no delay in exercising any right, power, or remedy hereunder shall impair any right, power or remedy which Lender may have, nor shall any such delay be construed to be a waiver of any such right, power, or remedy, or any acquiescence in any breach or default hereunder; nor shall any waiver of any breach or default of any Party hereunder be deemed a waiver of any default or breach subsequently occurring. All rights and remedies granted to Lender hereunder shall remain in full force and effect notwithstanding any single or partial exercise of, or any discontinuance of, any action begun to enforce any such right or remedy. The rights and remedies specified herein are cumulative and not exclusive of each other or of any rights or remedies which Lender would otherwise have. Any waiver, permit, consent or approval by Lender of any breach or default hereunder must be in writing and shall be effective only to the extent set forth in such writing signed by the Party to be charged and only as to that specific instance.

20. **Non-Exclusive Remedies.** In the event of a breach of any provision of this Agreement, the Parties, in addition to and not in lieu of the remedies expressly provided in this Agreement, shall be entitled to exercise such remedies that exist at law or equity to enforce this Agreement, including but not limited to seeking specific performance.

21. **Waiver of Jury Trial.** In an action to enforce the terms hereof, arising out of or involving this Agreement, Lender and Borrower knowingly and voluntarily waive any and all rights each may have to a trial by jury with respect to any action, claim, right, or remedy, whether arising in contract, tort, at law or in equity, under or in connection with this Agreement, or its exhibits and/or any of the other documents, and consent to a court trial before a judge.

22. **Attorneys' Fees.** The prevailing party in any action to enforce the terms of this Agreement shall be entitled to recover from the unsuccessful party all costs, expenses and reasonable attorneys' fees

incurred by the prevailing party (including, without limitations, such costs, expenses and fees on appeal) and, if such prevailing party shall recover judgment in any such action or proceeding, such costs and expenses, including those of expert witnesses and attorneys' fees, shall be included as part of the judgment.

**23. Voluntary Agreement.** This Agreement was freely and voluntarily entered into by the Parties who each had the opportunity to be represented and advised by counsel with respect to entering into this Agreement.

**24. Time Is Of The Essence.** As to all obligations hereunder, time is of the essence.

**25. Venue.** In the event of a suit or other legal proceeding arising out of this Agreement, any such action shall be brought in the courts in California, and the parties hereto shall submit to the jurisdiction of said Court.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective on the day and year set forth above.

IT IS SO AGREED.

[SIGNATURES ON FOLLOWING PAGE.]



[THIS AGREEMENT MAY BE EXECUTED IN COUNTERPARTS.]

**BORROWER:**

5510 Jed Smith Rd. LLC a California Limited Liability Company

By: T.O. 83  
Name: Tzvika Diner  
Title: Member TZVIKA DINER

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of Los Angeles )

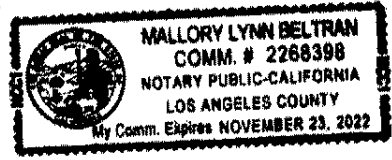
On October 3, 2022 before me, Mallory Lynn Beltran, Notary Public  
*Date Here Insert Name of the Officer*

Personally Appeared Tzvika Diner  
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Mallory Lynn Beltran  
*Signature of Notary Public*

**LENDER:**

Crosswind QRS 1, a California Corporation

By: Jan Brzeski  
Name: Jan Brzeski  
Title: Chief Executive Officer/President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of Los Angeles )

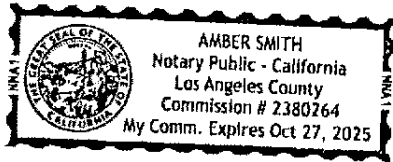
On 10/03/22 before me, Amber Smith, Notary Public  
*Date Here Insert Name of the Officer*

Personally Appeared Jan Brzeski  
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/hcr/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Amber Smith  
*Signature of Notary Public*

**EXHIBIT "A"**  
**LEGAL PROPERTY DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF HIDDEN HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOT 17 OF TRACT NO. 22423, IN THE CITY OF HIDDEN HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 733 PAGES 3 TO 6 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

AN EASEMENT FOR ROAD PURPOSES TO BE USED IN COMMON WITH OTHERS OVER LEWIS AND CLARK ROAD, JACOB HAMBLIN ROAD, ROBERT GUY ROAD, AS SHOWN UPON THE MAP OF TRACT NO. 22423, AS PER MAP RECORDED IN BOOK 733 PAGES 3 TO 6 INCLUSIVE OF MAPS, AND OVER JED SMITH ROAD AND ROUND MEADOW ROAD, AS SHOWN ON RECORD OF SURVEY MAP FILED IN BOOK 72 PAGES 3 TO 6, RECORD OF SURVEYS, AND OVER LONG VALLEY ROAD, AS SHOWN ON RECORD OF MAP FILED IN BOOK 65 PAGE 20 OF RECORD OF SURVEYS, ALL BEING IN THE CITY OF HIDDEN HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

APN #: 2049-002-030