

UNOFFICIAL COPY

(call)



Doc#: 1207312062 Fee: \$60.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/13/2012 10:28 AM Pg: 1 of 12

C.T.I.C. 8442846 D2 KARSA

Property of Cook County Clerk's Office

FIRST AMENDMENT TO LOAN DOCUMENTS

by

MTJS, INC.

to and for the benefit of

FIRST EAGLE BANK

**THIS DOCUMENT WAS PREPARED BY AND
AFTER RECORDING SHOULD BE MAILED TO:**

FIRST EAGLE BANK
1040 E. LAKE STREET
HANOVER PARK, IL 60133

Box 400-CTCC

S Y
P 12
S N
SC Y
INT OK

UNOFFICIAL COPY

FIRST AMENDMENT TO LOAN DOCUMENTS

This First Amendment to Loan Documents ("First Amendment") is dated as of the 29th day of December, 2011 and made by and among MTJS, Inc., an Illinois Corporation ("Borrower"); Mark Sipich ("Original Guarantor"); Joan Sipich ("Additional Guarantor"); (Original Guarantor and Additional Guarantor are hereinafter individually or collectively referred to as "Guarantor" or "Guarantors"); and First Eagle Bank ("Lender").

A. On July 1, 2008 Lender made a loan (the "Loan") to Borrower in the amount of One Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$1,750,000.00). The Loan is evidenced by the Promissory Note of Borrower dated July 1, 2008 in the principal amount of \$1,750,000.00 ("Note").

B. The Note is secured by a Mortgage and Assignment of Rents (collectively referred to herein as "Mortgage") dated July 1, 2008 and recorded as Document Nos. 0819033205 and 0819033206 with the Recorder of Deeds of Cook County, Illinois which was executed by Borrower in favor of Lender and which created a first lien on the property ("Property") known as 300 - 304 W. 31st Street, Chicago, IL 60616 which is legally described on Exhibit "A" attached hereto and made a part hereof.

C. The Note is further secured by the Commercial Guaranty ("Guaranty") of Original Guarantor dated July 1, 2008. The Note, Mortgage, Guaranty, and any and all other documents executed pursuant to or in connection with the Loan by Borrower or Guarantor, as amended, modified, assumed or replaced from time to time are hereinafter collectively referred to as the "Loan Documents".

D. Borrower and Guarantor request the restructuring of the Loan with a lower interest rate and a new schedule of payment. Lender has agreed to the requests as aforesaid, subject to the following covenants, agreements, representations and warranties.

NOW THEREFORE, for and in consideration of the covenants, agreements, representations and warranties set forth herein, the parties hereto agree as follows:

1. **Recitals.** The recitals set forth above shall be incorporated herein, as if set forth in their entirety.

Prepared By: NPV

Officer Review

Initial Review *[Signature]* Date 12/28/11

Final Review *[Signature]* Date 12/29/11

Loan No. 76562

UNOFFICIAL COPY

2. **Interest Rate, and Schedule of Payment.** The Note is hereby amended by reducing the interest rate from 6.0% to 3.0% per annum effective as of the date hereof. Borrower will pay the Loan, that has a current principal balance of \$1,667,735.74 with interest at the fixed rate of 3.0% per annum on the unpaid principal balance from the date hereof until paid in full pursuant to the following schedule:

At or prior to the execution of this First Amendment:

Accrued unpaid interest to December 15, 2011 in the amount of \$2,554.65;

Outstanding accounts receivables in the amount of \$3,773.00;

19 consecutive monthly payments of principal and interest in the amount of \$7,946.75 beginning January 15, 2012 and on the same day of each month after that, and

1 final principal and interest payment at Maturity on July 15, 2013 estimated at \$1,603,395.15. This estimated final payment is based on the assumption that all payments will be made exactly as scheduled; the actual payment will be for all principal and accrued interest not yet paid, together with any other unpaid amounts under this Loan.

Borrower will pay the past due tax escrow deposit in the amount of \$4,762.71 over a period of 6 months beginning January 15, 2012 and on the same day of each month thereafter in the amount of \$778.79. This amount will be in addition to the regular monthly tax escrow deposit of \$2,838.79.

Interest on the Note is computed on a 365/360 basis; that, is by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable on the Note is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated herein.

3. **Additional Guarantor.** Joan Sipich is hereby added as additional guarantor to the Loan. Concurrent with the execution hereof, Joan Sipich shall execute and deliver to Lender in such form as Lender shall require a Commercial Guaranty as if she had originally guaranteed the Note hereinabove described at the time of its execution and delivery. All references in the Note and other Loan Documents to guaranty or guarantor shall hereafter be deemed to include Joan Sipich.

4. **Financial Statements.** Borrower and each Guarantor shall submit to Lender annually beginning June 1, 2012 and on that day every year thereafter the Business Federal Income Tax Return of Borrower and the Personal Financial Statements and Personal Federal Income Tax Returns of each Guarantor.

UNOFFICIAL COPY

5. **Modification of Documents.** The Mortgage and other Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Note, as hereby modified and amended.

6. **Guarantor Not Released.** Original Guarantor acknowledges and consents to the amendments and modifications set forth in this First Amendment. As additional consideration for Lender to amend the Note, Original Guarantor shall execute and deliver to Lender, concurrent with the execution of this First Amendment, an Amended and Restated Commercial Guaranty of even date herewith in the original principal amount of \$1,667,735.74 (the "Amended Guaranty"). All references in the Loan Documents to the "Guaranty" shall hereafter be deemed to include the "Amended Guaranty".

7. **Restatement of Representations.** Borrower and Original Guarantor hereby ratify and confirm their respective obligations and liabilities under the Note, Mortgage, Amended Guaranty, and other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that they have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Note, Mortgage, Amended Guaranty, and other Loan Documents, as so amended.

8. **Defined Terms.** All capitalized terms which are not defined herein shall have the definitions ascribed to them in the Note, Mortgage, Amended Guaranty, and other Loan Documents.

9. **Documents Unmodified.** Except as modified hereby and by the Amended and Additional Guarantees, the Note, Mortgage, and other Loan Documents shall remain unmodified and in full force and effect.

10. **Fee.** In consideration of Lender's agreement to amend the Loan, as aforesaid, Borrower has agreed and shall pay Lender upon execution hereof, a fee in the amount of One and 00/100 Dollar (\$1.00) plus 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. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

- (a) The representations and warranties in the Loan Documents are true and correct as of the date hereof.
- (b) Other than a payment default under the Note, there is currently no other Event of Default (as defined in the 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

UNOFFICIAL COPY

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 First Amendment, 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, Original 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 First Amendment and to perform the Loan Documents as modified herein. The execution and delivery of this First Amendment 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 First Amendment has been duly executed and delivered on behalf of Borrower.

12. **Binding Agreement.** This First Amendment shall not be construed more strictly against Lender than against Borrower or Guarantors merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantors, and Lender have contributed substantially and materially to the preparation of this Amendment, and Borrower, Guarantors, 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 First Amendment. Each of the parties to this First Amendment represents that it has been advised by its respective counsel of the legal and practical effect of this First Amendment, and recognizes that it is executing and delivering this First Amendment, 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 First Amendment, 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.

UNOFFICIAL COPY

13. **Severability.** In the event any provision of this First Amendment shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

14. **Other Modifications.** Any forbearance by Lender in exercising any right or remedy under the Note or any of the other loan documents or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any of its rights or remedies under any of the loan documents with respect to Borrower's obligations under the Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

Grant of Security Interest. To secure all obligations of Borrower and Guarantors, Borrower and Guarantors hereby pledges and grants to Lender a lien upon and security interest in (and may, without demand or notice of any kind, when any amount shall be due and payable by the undersigned hereunder, appropriate and apply toward the payment of such amount, in such order of application as Lender may elect) any and all balances, credits, deposits, accounts or monies of or in the name of Borrower or any Guarantor now or hereinafter in the possession of Lender and any and all property of every kind or description of or in the name of Borrower or any Guarantor now or hereafter, for any reason or purpose whatsoever, in the possession or control of, or in transit to, Lender or any agent or bailee for Lender. Lender shall have the rights and remedies of a secured party under the Uniform Commercial Code of the State of Illinois in respect to such property, including, without limitation, the right to sell or otherwise dispose of any or all of such property.

This First Amendment shall extend to and be binding upon each Borrower and each Guarantor and their heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

This First Amendment shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois, including all matters of construction, validity and performance.

This First Amendment constitutes the entire agreement between the parties with respect to the aforesaid Amendment and shall not be amended or modified in any way except by a document in writing executed by all of the parties thereto.

This First Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

UNOFFICIAL COPY

Borrower and each Guarantor and any other obligor under the Loan, on behalf of themselves and their respective successors and assigns (collectively and individually, the "Mortgagor Parties"), hereby fully, finally and completely release, remise, acquit and forever discharge, and agree to hold harmless Lender and its respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, fiduciaries, attorneys, agents and properties, past, present and future, and their respective heirs, successors and assigns (collectively and individually, the "Mortgagee Parties"), of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, debts, liens, actions, and causes of action of any and every nature whatsoever, known or unknown, direct or indirect, whether at law, by statute or in equity, in contract or in tort, under state or federal jurisdiction, and whether or not the economic effects of such alleged matters arise or are discovered in the future (collectively, the "claims"), which the Mortgagor Parties have as of the date of this First Amendment or may claim to have against the Mortgagee Parties, including but not limited to, any claims arising out of or with respect to any and all transactions relating to the Loan or the Loan Documents occurring on or before the date of this First Amendment, including but not limited to, any loss, cost or damage of any kind or character arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of the Mortgagee Parties occurring on or before the date of this First Amendment. The foregoing release is intended to be, and is, a full, complete and general release in favor of the Mortgagee Parties with respect to all claims, demands, actions, causes of action and other matters described therein, or any other theory, cause of action, occurrence, matter or thing which might result in liability upon the Mortgagee Parties arising or occurring on or before the date of this First Amendment. The Mortgagor Parties understand and agree that the foregoing general release is in consideration for the agreements of Lender contained herein and that they will receive no further consideration for such release. Furthermore, each of the Mortgagor Parties represents and warrants to Lender that she, he or it: (i) read this agreement, including without limitation, the release set forth in this section (the "Release Provision"), and understands all of the terms and conditions hereof, and (ii) executes this First Amendment voluntarily with full knowledge of the significance of the Release Provision and the releases contained herein and execution hereof. The Mortgagor Parties agree to assume the risk of any and all unknown, unanticipated, or misunderstood claims that are released by this First Amendment.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER AND EACH GUARANTOR (EACH AN "OBLIGOR") HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS FIRST AMENDMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON

UNOFFICIAL COPY

CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS FIRST AMENDMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF OBLIGORS AND LENDER WITH RESPECT TO THIS FIRST AMENDMENT, OR THE TRANSACTION RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY OBLIGOR OR LENDER MAY FILE A COPY OF THIS EXECUTED FIRST AMENDMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OBLIGOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

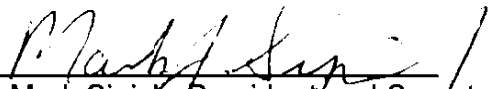
Cook County Clerk's Office

UNOFFICIAL COPY


IN WITNESS WHEREOF, this First Amendment was executed by the undersigned as of the date and year first set forth above.

BORROWER:

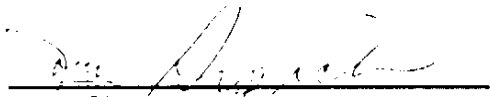
MTJS, Inc., an Illinois corporation


By: Mark Sipich, President and Secretary

ORIGINAL GUARANTOR:

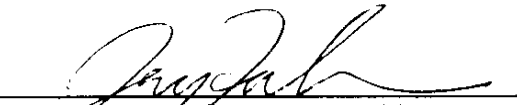

Mark Sipich

ADDITIONAL GUARANTOR:


Joan Sipich

LENDER:

First Eagle Bank


By: Jay Fahr, Sr. Vice President

Property of Cook County Clerk's Office

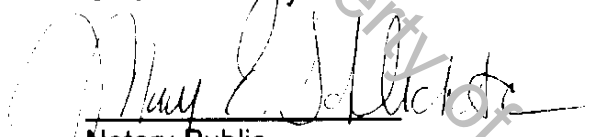
UNOFFICIAL COPY

BORROWER'S ACKNOWLEDGMENT

STATE OF ILLINOIS) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Mark Sipich, President and Secretary of MTJS, Inc., an Illinois corporation, 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, sealed and delivered said instrument as his free and voluntary act and deed as well as that of the company he represents, for the uses and purposes therein set forth.

Given under my hand and Official Seal this 29th day of December, 2011.


Notary Public




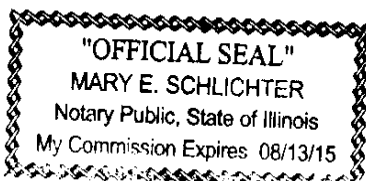
ORIGINAL GUARANTOR'S ACKNOWLEDGMENT

STATE OF ILLINOIS) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Mark Sipich, 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, sealed and delivered said instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and Official Seal this 29th day of December, 2011.


Notary Public



UNOFFICIAL COPY

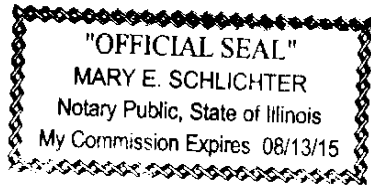
ADDITIONAL GUARANTOR'S ACKNOWLEDGMENT

STATE OF ILLINOIS) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Joan Sipich, 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 she signed, sealed and delivered said instrument as her free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and Official Seal this 27th day of December, 2011.

Mary E. Schlichter
Notary Public



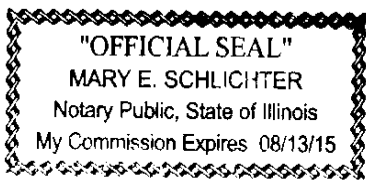
LENDER'S ACKNOWLEDGMENT

STATE OF ILLINOIS) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Jay Fahn, Sr. Vice President of FIRST EAGLE BANK, appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act and deed as well as that of the bank he represents, for the uses and purposes therein set forth.

Given under my hand and Official Seal this 27th day of December, 2011.

Mary E. Schlichter
Notary Public



UNOFFICIAL COPY

EXHIBIT "A"

LOTS 6, 7 AND 8 IN COMMISSIONER'S PARTITION OF LOT 37 IN BLOCK 10 OF UNITED STATES BANK ADDITION IN THE WEST 1/2 OF THE SE 1/4 OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 300-304 W. 31ST STREET, CHICAGO, IL 60616

P.I.N.: 17-28-434-033-0000

Property of Cook County Clerk's Office