



**THIS INSTRUMENT PREPARED
BY AND RETURN TO:**

Doc#: 1504149131 Fee: \$58.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 02/10/2015 01:17 PM Pg: 1 of 11

**Martin W. Salzman, Esq.
Horwood Marcus & Berk Chartered
500 West Madison Street, Suite 3700
Chicago, Illinois 60661**

2710888 Horwood

MODIFICATION TO LOAN DOCUMENTS

THIS MODIFICATION TO LOAN DOCUMENTS (this "Modification") is made effective as of January 10, 2015, by and between **MICHIGAN AVENUE SUITES, L.L.C.**, an Illinois limited liability company ("Mortgagor"), and **FIRST BANK OF HIGHLAND PARK**, its successors and assigns ("Bank").

WITNESSETH

A. Mortgagor has executed and delivered to the order of Bank that certain Promissory Note, dated October 8, 2008 (the "Original Note"), in the original principal amount of \$18,312,000 ("Existing Loan"), as amended by that certain Omnibus Rider, dated October 8, 2008, by and among Mortgagor, Bank, Donal P. Barry, Sr., Margaret H. Barry, Donal P. Barry, Jr., Sean T. Barry and James W. Purcell ("Omnibus Rider"), as amended by that certain Change in Terms Agreement, dated October 10, 2013, made by Mortgagor in favor of Bank ("First Change in Terms Agreement"), as amended by that certain Change in Terms Agreement, dated January 10, 2014, made by Mortgagor in favor of Bank ("Second Change in Terms Agreement"), as amended by that certain Change in Terms Agreement, dated April 10, 2014, made by Mortgagor in favor of Bank ("Third Change in Terms Agreement"), as amended by that certain Change in Terms Agreement, dated July 10, 2014, made by Mortgagor in favor of Bank ("Fourth Change in Terms Agreement"), which together with the Omnibus Rider, First Change in Terms Agreement, Second Change in Terms Agreement, Third Change in Terms Agreement and Fourth Change in Terms Agreement shall be collectively referred to herein as the "Existing Note";

B. Mortgagor desires, and Bank has agreed, to amend and restate the Existing Note and modify the terms and conditions of the Existing Loan, whereby Bank has agreed to make to Mortgagor a loan in the principal amount of \$16,992,643 ("Term Loan"), which Term Loan is evidenced by that certain Amended and Restated Promissory Note, dated the date hereof, in the principal amount of \$16,992,643, executed by Mortgagor and delivered to Bank, as amended or restated from time to time ("Amended and Restated Note");

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C. Mortgagor desires, and Bank has agreed, to make to Mortgagor a loan in the principal amount of \$4,000,000 ("Revolving Loan", which together with the Term Loan shall be collectively referred to herein as the "Loan"), which Revolving Loan is evidenced by that certain Revolving Line of Credit Note, dated the date hereof, in the principal amount of \$4,000,000, executed by Mortgagor and delivered to Bank, as amended or restated from time to time ("Revolving Note", which together with the Amended and Restated Note shall be collectively referred to herein as the "Notes"). Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Notes;

D. The Notes are secured by, among other things: (i) that certain Mortgage, dated October 8, 2008, made by Mortgagor in favor of Bank, and recorded on October 15, 2008, with the Cook County Recorder of Deeds as Document Number 0828940158, as amended by the Omnibus Rider (collectively, the "Mortgage"); (ii) that certain Assignment of Rents, dated October 8, 2008, made by Mortgagor in favor of Bank, and recorded on October 15, 2008, with the Cook County Recorder of Deeds as Document Number 0828940159, as amended by the Omnibus Rider (collectively, the "Assignment of Rents"); and (iii) that certain Hazardous Substances Certificate and Indemnity Agreement, dated October 8, 2008, made by Mortgagor in favor of Bank, as amended by the Omnibus Rider (collectively, the "Indemnity Agreement", which together with the Mortgage, the Assignment of Rents and all other documents evidencing and securing the Loan shall be referred to herein collectively as the "Loan Documents");

E. The property encumbered by the Mortgage and Assignment of Rents is commonly known as 320 N. Michigan Avenue, Chicago, Illinois 60601, and is legally described on Exhibit A attached hereto and made a part hereof;

F. The Loan Documents contain certain provisions with respect to the Notes;

G. Mortgagor and Bank desire to modify the provisions of the Loan Documents, as applicable, concerning the Notes and to make such other amendments and modifications as may be set forth herein; and

H. As a condition precedent to Bank's agreement to modify the provisions of the Loan Documents concerning the Notes, Bank has required, among other things, the execution and delivery of this Modification.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree that the Mortgage, the Assignment of Rents, and the Indemnity Agreement be and are hereby modified and amended as follows:

1. Amendments to Mortgage.

(a) The Section entitled "MAXIMUM LIEN" is hereby deleted in its entirety and the following inserted in lieu thereof:

"MAXIMUM LIEN. At no time shall the principal amount of Indebtedness secured by the Mortgage, not including sums advanced to protect the security of the Mortgage, exceed \$41,985,286."

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(b) The Section entitled "EVIDENCE OF PAYMENT" is hereby deleted in its entirety and the following inserted in lieu thereof:

"Evidence of Payment. Within ten (10) days of payment of the taxes or assessments for the Property, which payment shall be made not later than the date that the such taxes or assessments are due and payable, Grantor shall furnish to Lender satisfactory evidence of payment of the taxes or assessments."

(c) The following is inserted in the Section entitled "EVENTS OF DEFAULT":

"Transfers. Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer" and an Event of Default hereunder:

- (1) The Property or any part thereof or interest therein;
- (2) All or any part of the managing member or manager interest, as the case may be, in a limited liability company Grantor or a limited liability company which is a general partner of a partnership Grantor;
- (3) All or any part of the general partner or joint venture interest, as the case may be, of a partnership Grantor or a partnership which is a manager of a limited liability company Grantor or the conversion of a partnership Grantor to a corporation or limited liability company; or
- (4) If there shall be any change in control (by way of transfers of stock, partnership or member interests or otherwise) in any partner, member, manager or shareholder, as applicable, which directly controls the day to day operations and management of Grantor and/or owns a controlling interest in Grantor such that Donal P. Barry, Sr. ("Barry") is no longer an equity holder holding at least a majority of the units of Michigan Avenue Suites Management SPE, Inc., or Grantor.

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this this Section shall not apply: (A) to liens securing the Indebtedness; (B) to the lien of current taxes and assessments not in default; (C) to any transfers of the Property, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives; (D) to leases permitted by the terms of the Related Documents, (E) subject to the foregoing Subsection (4), the transfer of membership interests in Grantor to immediate family members and to trusts for

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such family members; provided, however, that Barry continues to directly control the day to day operations and management of Grantor, or (F) condemnation of all or any portion of the Property by a governmental or quasi-governmental authority. With respect to any of the above transfers, Grantor shall give the Lender prior written notice of such transfers.” Borrower, or any direct or indirect partner, member or shareholder of Borrower shall be permitted to make from time to time one or more sales, conveyances, transfers or other vestings (a “Permitted Transfer”) of any direct or indirect interest in Borrower and any member of Borrower up to an aggregate of 49% of the total interests of Borrower, without the prior consent of Lender, provided that following any such sale, conveyance, transfer or other vesting, Borrower is directly or indirectly controlled and managed by one or more members of the BJB Group. Copies of any and all documents evidencing any such sale, conveyance, transfer or other vesting must be provided to Lender within fifteen (15) days after the occurrence of said action including, without limitation, a statement detailing the action and a listing of reallocations and percentages of ownership interest in Borrower. Other than Permitted Transfers as outlined above, no direct or indirect interests or management control in (1) the Property, (2) the Borrower, (3) any partner, member or shareholder of Borrower or (4) any entity that has decision-making control of any partner, member or shareholder of Borrower may be sold, transferred (either to third parties or to related entities), conveyed, encumbered, secured, pledged or vested without the prior written consent of Lender (which Lender may withhold at its sole discretion); and the occurrence of such an event (under subparts 1 through 4 of this sentence) will constitute an Event of Default under the Loan Documents.” The term “BJB Group” means Donal Barry, Sr., Margaret Barry, Donal Barry, Jr., Sean Parry and James Purcell (the “BJB Individuals”), and the spouse, parent, sibling, child, grandchild or other lineal descendant and/or family trust for the benefit of one or more of the BJB Individuals.

(d) The definition of “Note” in the Section entitled “DEFINITIONS” is hereby deleted in its entirety and the following inserted in lieu thereof:

“**Note.** The word “Note” means, collectively, that certain Amended and Restated Promissory Note, dated January 10, 2015, in the principal amount of \$16,992,643, and that certain Revolving Line of Credit Note, dated January 10, 2015, in the principal amount of \$4,000,000, each from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancing of, consolidations of, and substitutions for the Note. NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.”

2. Amendments to Assignment of Rents.

(a) The following Section is hereby inserted after the Section entitled “GRANTOR’S REPRESENTATIONS AND WARRANTIES”:

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“GRANTOR’S COVENANTS. Grantor hereby acknowledges and agrees that Grantor shall not enter into any Lease (as hereinafter defined) without the prior written consent of Lender.”

(b) The following is inserted in the Section entitled “DEFINITIONS”:

“Lease. The word “Lease” means any and all present leases of the Property, together with all future leases hereinafter entered into affecting the Property or any portion thereof, and all guarantees, amendments, extensions and renewals of said leases.”

(c) The definition of “Note” in the Section entitled “DEFINITIONS” is hereby deleted in its entirety and the following inserted in lieu thereof:

“Note. The word “Note” means, collectively, that certain Amended and Restated Promissory Note, dated January 10, 2015, in the principal amount of \$16,992,643, and that certain Revolving Line of Credit Note, dated January 10, 2015, in the principal amount of \$4,000,000, each from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancing of, consolidations of, and substitutions for the Note.”

3. Amendment to Indemnity Agreement. The definition of “Note” in the Section entitled “DEFINITIONS” is hereby deleted in its entirety and the following inserted in lieu thereof:

“Note. The word “Note” means, collectively, that certain Amended and Restated Promissory Note, dated January 10, 2015, in the principal amount of \$16,992,643, and that certain Revolving Line of Credit Note, dated January 10, 2015, in the principal amount of \$4,000,000, each from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancing of, consolidations of, and substitutions for the Note.

4. Amendments to Loan Documents. All references in the Loan Documents to the Note shall be deemed to refer collectively to the Amended and Restated Note and the Revolving Note, each as defined herein.

5. Full Force and Effect. The provisions of the Loan Documents, as respectively amended hereby, are in full force and effect and the Loan Documents as so amended are hereby ratified and confirmed and all representations and warranties made therein remain true and correct as of the date hereof.

6. Priority. Nothing herein contained shall in any manner affect the lien or priority of the Loan Documents, or the covenants, conditions and agreements therein contained, as amended.

7. Conflict. In the event of conflict between any of the provisions of the Loan Documents and this Modification, the provisions of this Modification shall control.

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8. Representations. Mortgagor hereby renews, remakes and reaffirms the representations and warranties contained in the Loan Documents.

9. Counterparts. This Modification may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Modification by signing one or more counterparts.

10. Binding. This Modification is binding upon, and inures to the benefit of, the parties hereto and their respective successors and assigns.

11. Limitation of Liability. The Loan shall be fully recourse to Borrower and to all of the collateral pledged, hypothecated or assigned to Lender pursuant to the Loan Documents, and non-recourse to Borrower's direct or indirect members, including their respective officers, directors, managers, trustees and agents; provided, however, nothing herein shall be construed as limiting or modifying the liability of Borrower under any of the Loan Documents or of Guarantor under the Guaranty.

[Signature pages follow]

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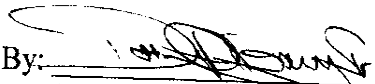
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IN WITNESS WHEREOF, this Modification has been duly executed as of the day and year first above written.

MORTGAGOR:

MICHIGAN AVENUE SUITES, L.L.C., an Illinois limited liability company

By: **MICHIGAN AVENUE SUITES MANAGEMENT SPE, INC.**, an Illinois corporation, Managing Member

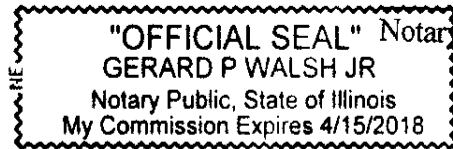
By: 


Donal P. Barry, Sr., President

STATE OF ILLINOIS)
COUNTY OF COOK) ss.
)

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donal P. Barry, Sr., personally known to me as the President of **MICHIGAN AVENUE SUITES MANAGEMENT SPE, INC.**, an Illinois corporation, the Managing Member of **MICHIGAN AVENUE SUITES, L.L.C.**, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing Modification to Loan Documents, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument, on behalf of the company and as his/her free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 29th day of January, 2015.





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IN WITNESS WHEREOF, this Modification has been duly executed as of the day and year first above written.

BANK:

FIRST BANK OF HIGHLAND PARK

By: *P.F. Stallone*
Name: PATRICK F. STALLONE
Its: EXECUTIVE VICE PRESIDENT

STATE OF ILLINOIS)
COUNTY OF Lake) ss.

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Patrick F. Stallone Executive Vice President of **FIRST BANK OF HIGHLAND PARK**, personally known to me to be the same person whose name is subscribed to the foregoing Modification to Loan Documents, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument, on behalf of the company and as his/her free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 23rd day of January 2015.



Mariela Alducin
Notary Public

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EXHIBIT A

Legal Description

LOTS 39 AND 40 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 320 N. Michigan Avenue, Chicago, Illinois 60601

P.I.N.: 17-10-311-020-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY**ENDORSEMENT**

ATTACHED TO AND FORMING A PART OF
POLICY NUMBER 0005625

ISSUED BY
FIRST AMERICAN TITLE INSURANCE COMPANY

DATE DOWN ENDORSEMENT 1L (FOR LOAN POLICY)

SCHEDULE A OF THE ABOVE POLICY IS HEREBY AMENDED AS FOLLOWS:

1. THE EFFECTIVE DATE OF THE POLICY IS HEREBY EXTENDED FROM OCTOBER 15, 2008 TO NOVEMBER 14, 2014.
2. THE ESTATE OR INTEREST DESCRIBED IN SCHEDULE A AT THE EXTENDED EFFECTIVE DATE OF POLICY IS VESTED IN: MICHIGAN AVENUE SUITES, LLC
3. THE DESCRIPTION OF THE MORTGAGE OR TRUST DEED IN SCHEDULE A IS HEREBY AMENDED AS FOLLOWS: MODIFICATION DATED AS OF 1/23/15 AND RECORDED AS OF 2/10/15 AS DOCUMENT NO. 1504149131 MADE BY AND BETWEEN MICHIGAN AVENUE SUITES, LLC AND FIRST BANK OF HIGHLAND PARK INCREASING THE INDEBTEDNESS TO \$20,992,643

SCHEDULE B OF THE ABOVE POLICY IS HEREBY AMENDED AS FOLLOWS:

1. THE FOLLOWING EXCEPTION NUMBER(S)/LETTER(S) ARE HEREBY ADDED:
 9. LEASEHOLD INTEREST OF 320 MICHIGAN AVENUE LLC UNDER AND BY VIRTUE OF MEMORANDUM OF LEASE RECORDED AS DOCUMENT NO. 1407845045, DEMISING THE LAND FOR A PERIOD OF YEARS ENDING MARCH 31, 2064.
SMDA RECORDED AS DOCUMENT NO. 1407845046.
 10. WE SHOULD BE FURNISHED:
 - A.) CERTIFICATION FROM THE ILLINOIS SECRETARY OF STATE THAT MICHIGAN AVENUE SUITES LLC HAS PROPERLY FILED ITS ARTICLES OF ORGANIZATION;
 - B.) A COPY OF THE ARTICLES OF ORGANIZATION, TOGETHER WITH ANY AMENDMENTS THERETO;
 - C.) A COPY OF THE OPERATING AGREEMENT, IF ANY, TOGETHER WITH ANY AMENDMENTS THERETO;
 - D.) A LIST OF INCUMBENT MANAGERS OR OF INCUMBENT MEMBERS IF MANAGERS HAVE NOT BEEN APPOINTED; AND
 - E.) CERTIFICATION THAT NO EVENT OF DISSOLUTION HAS OCCURRED.

NOTE: IN THE EVENT OF A SALE OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF THE L.L.C. OR OF A SALE OF L.L.C. ASSETS TO A MEMBER OR MANAGER, WE SHOULD BE FURNISHED A COPY OF A RESOLUTION AUTHORIZING THE TRANSACTION ADOPTED BY THE MEMBERS OF SAID L.L.C.
2. THE FOLLOWING EXCEPTION NUMBER(S)/LETTER(S) ARE HEREBY DELETED: NONE
3. THE FOLLOWING EXCEPTION NUMBER(S)/LETTER(S) ARE HEREBY AMENDED TO READ AS FOLLOW:
 3. TAXES FOR THE YEAR(S) 2014

PERMANENT INDEX NUMBER: 17-10-300-020.
THE 2013 TAXES AMOUNTING TO \$381,095.25 ARE PAID.

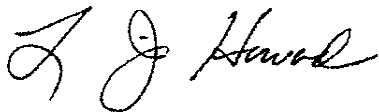
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THE 2014 TAXES ARE NOT YET DUE OR PAYABLE.

THIS ENDORSEMENT IS MADE A PART OF THE POLICY AND IS SUBJECT TO ALL OF THE TERMS AND PROVISIONS THEREOF AND OF ANY PRIOR ENDORSEMENTS THERETO. EXCEPT TO THE EXTENT EXPRESSLY STATED, IT NEITHER MODIFIES ANY OF THE TERMS AND PROVISIONS OF THE POLICY AND ANY PRIOR ENDORSEMENTS, NOR DOES IT EXTEND THE EFFECTIVE DATE OF THE POLICY AND PRIOR ENDORSEMENTS, NOR DOES IT INCREASE THE FACE AMOUNT THEREOF.

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FREEDOM TITLE CORPORATION



BY:

AUTHORIZED SIGNATORY

NOTE: THIS ENDORSEMENT SHALL NOT BE VALID OR BINDING UNTIL SIGNED BY AN AUTHORIZED SIGNATORY.