



Doc# 1628010049 Fee \$76.00
RHSP Fee:\$9.00RPRF Fee \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 10/06/2016 10:48 AM Pg: 1 of 20

Recording Requested By
And When Recorded Mail
To:
Charity & Associates, P.C.
20 N. Clark Street, Suite 1150
Chicago, Illinois 60602
Attention: Elvin E. Charity

Space Above For Recorder's Use

MODIFICATION AND AMENDMENT TO LOAN AGREEMENT AND NOTE
REPLACEMENT

This Modification and Amendment to Loan Agreement and Note Replacement ("Modification Agreement") is made and entered into as of the 1st day of September, 2016 by and between SENIOR SUITES CHICAGO HEGEWISCH LLC, an Illinois limited liability company ("Borrower"), whose address is 303 E. Wacker, Suite 2400, Chicago, Illinois 60601, and BMO HARRIS BANK N.A., a national banking association, formerly known as Harris Trust and Savings Bank, an Illinois banking corporation ("Lender"), whose address is 115 S. LaSalle Street-20W, Chicago, IL 60603.

RECITALS

A. Borrower is the owner of (i) fee simple title in and to the real property situated at 13550 S. Avenue O in the City of Chicago, Illinois and legally described in Exhibit A hereto and all rights appurtenant thereto and all improvements, now or hereafter constructed thereon and all personal property used in the operation thereof (collectively, the "Property").

B. Borrower and Lender have heretofore made, executed and delivered that certain Loan Agreement (Construction Loan Converting to Term Loan) (the "Loan Agreement"), dated as of September 14, 2000, pursuant to the terms of which Lender agreed to make a mortgage loan (the "Loan") to Borrower in an original principal amount not to exceed Three Hundred Forty One Thousand and No/100 Dollars (\$341,000.00), as evidenced by that certain promissory note (the "Original Note"), dated as of September 14, 2000, executed by Borrower to the order of Lender.

C. The Loan is secured by, among other things, (i) that certain Construction Mortgage, Personal Property Security Agreement, Assignment of Leases and Rentals and Financing Statement (the "Mortgage"), dated as of September 14, 2000, made by the Borrower to the Lender encumbering the Borrower's interest in the Property and recorded in the Office of the Recorder of Cook County, Illinois on September 19, 2000 as Document No. 00730545.

D. As of the date hereof, the outstanding principal balance of the Loan is Two Hundred

N0001477-1 1 of 1 JL/sw



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Sixty-Nine Thousand Eighty-Eight and 23/100 Dollars (\$269,088.23).

E. Borrower and Lender desire and intend by this Modification Agreement to amend, replace and reinstate the Original Note with the replacement promissory note attached hereto as Exhibit B (the "**Replacement Note**") and amend the Loan Agreement to, among other things, (a) extend the Maturity Date of the Note from September 1, 2016 to September 1, 2021, (b) change the interest rate on the Loan to a variable interest rate as herein provided, (c) provide for fixed monthly principal payments of \$1,494.94, plus interest at the variable interest rate, and (d) provide for an upfront extension fee of .25% of the principal balance of the Loan.

F. As used here, the term "**Loan Documents**" means the Loan Agreement, the Replacement Note, the Mortgage and any other documents executed to evidence or secure the Loan, as any or all of them may have been amended to date. This Agreement is a Loan Document.

G. All capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Loan Agreement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) paid and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals**. The Borrower certifies that the recitals set forth above in the Factual Background are true, accurate and correct.
2. **Reaffirmation of Loan**. The Borrower hereby reaffirms all of its obligations under the Loan Documents, including, without limitation, the Replacement Note, and Borrower acknowledges that it has no claims, offsets or defenses with respect to the payment of sums due under the Loan Agreement, the Replacement Note, the Mortgage or any of the other Loan Document to which the Borrower is a party.
3. **Replacement Note**. The parties hereby intend to amend, restate and replace the Original Note in its entirety with the Replacement Note and upon the execution and delivery of the Replacement Note, the Replacement Note shall amend, restate, supersede and replace the Original Note in its entirety.
4. **Modifications to Loan Agreement**. The Loan Agreement is hereby modified, amended and supplemented as follows:
 - (a) Notwithstanding anything to the contrary contained in the Loan Agreement, all references in the Loan Agreement to the term "*Note*" shall be deemed to mean and reference the Replacement Note.
 - (b) Notwithstanding anything to the contrary contained in the Loan Agreement, all references in the Loan Agreement to the term "*Maturity Date*" shall be deemed to mean September 1, 2021.

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(c) The following definitions are hereby added to the Loan Agreement:

“**OFAC**” means the Office of Foreign Asset Control, U.S. Department of the Treasury.

“**OFAC List**” means the Specially Designated Nationals and Blocked Persons List maintained by OFAC.

“**OFAC Rules**” shall have the meaning set forth in Section 3.1.41.

“**Patriot Act**” means the USA Patriot Act (Pub. L. 107-56, signed into law October 26, 2001), as amended.

5. **Borrower's Reimbursement Obligation/Extension Fee.** In consideration of the extension of the term of the Loan and the other amendments to the Loan Documents set forth in this Modification Agreement, the Borrower shall pay to Lender contemporaneously with the execution and delivery of this Modification Agreement, a modification and extension fee equal to Six Hundred Seventy-Two and 72/100 Dollars (\$672.72). Borrower shall pay and reimburse Lender for all reasonable costs and expenses incurred by Lender in connection with this Modification Agreement, including, without limitation, legal fees and expenses of Lender's counsel.

6. **Conditions Precedent.** Before this Agreement becomes effective and any party becomes obligated under it, all of the following conditions shall have been satisfied at Borrower's sole cost and expense in a manner acceptable to Lender in the exercise of Lender's sole judgment:

(a) Lender shall have received such assurance as Lender may require that the validity and priority of the Mortgage has not been and will not be impaired by this Agreement or the transactions contemplated by this Agreement, including a date down endorsement to be attached to Loan Title Policy No. N0001477P, dated September 19, 2000 (the “Title Policy”), issued by Near North National Title LLC, as agent for Ticor Title Insurance Company.

(b) Lender shall have received fully executed and, where appropriate, acknowledged originals of this Agreement and the Replacement Note, and (ii) any other documents which Lender may require or request in accordance with this Agreement or the other Loan Documents.

(c) Lender shall have received an extension fee required by Section 5 hereof in immediately available funds.

(d) Lender shall have received reimbursement, in immediately available funds, of all costs and expenses incurred by Lender in connection with this Agreement, including charges for title insurance (including endorsements), recording, filing and escrow charges, fees for appraisal, architectural and engineering review, construction services and environmental services, mortgage taxes, and legal fees and expenses of Lender's counsel. Borrower acknowledges that the extension fee payable in connection with this transaction does not include the amounts payable by Borrower under this subsection.

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7. **Borrower's Representations and Warranties.** Borrower represents and warrants to Lender as follows:

(a) **Loan Documents.** All representations and warranties made and given by Borrower in the Loan Agreement and the other Loan Documents are true, accurate and correct as of the date hereof.

(b) **No Event of Default.** No Event of Default under the Loan Agreement or any of the other Loan Documents has occurred and is continuing, and no event has occurred and is continuing which, with notice or the passage of time or both, would be a Default or an Event of Default.

(c) **Collateral.** Borrower lawfully holds title to the Property, free and clear of any liens or encumbrances, other than as are expressly identified in the Title Policy, and the security interest of Lender therein is a first priority lien therein, free and clear of any other liens or encumbrances, other than as are expressly identified in the Title Policy.

(d) **Organization/Authority.** Borrower is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Illinois. Senior Suites Chicago Corporation, an Illinois corporation (the "Manager"), duly organized, validly existing and in good standing under the laws of the State of Illinois, and is the sole manager of the Borrower. There have been no material changes in the organization, ownership structure or formation documents of Borrower or General Partner since the execution and delivery of the Loan Agreement, except as set forth on Exhibit C attached hereto. The principal place of business of the Borrower is 303 E. Wacker, Suite 2400, Chicago, Illinois 60601. Each of the Borrower and Manager has taken all partnership and corporate actions, as are necessary to authorize the execution and delivery of this Modification Agreement, and the Replacement Note and this Modification Agreement, the Replacement Note and the other Loan Documents, as hereby modified, constitute valid and binding obligations of each of them, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other law and equity principles applied for the relief of debtors heretofore or hereafter enacted. This Modification Agreement and the Replacement Note is authorized under, and does not violate or conflict with, or cause a default under, the Borrower's operating agreement or with any other contract or agreement to which the Borrower or Manager is a party or is bound or violate or contravene any law to which the Borrower is subject. Borrower's organizational identification number, if any, assigned by the state of its incorporation or organization is 00417807. Borrower's federal tax identification number is 36-4392390.

(e) **Investment Company Act.** Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; or (b) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

(f) **No Bankruptcy Filing.** Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of its assets or

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property and Borrower does not have any knowledge of any Person contemplating the filing of any such petition against it.

(g) **Foreign Person.** Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code

(h) **Customer Identification – USA Patriot Act Notice; OFAC.** Lender hereby notifies Borrower that pursuant to the requirements of the Patriot 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 Patriot Act. Borrower represents and covenants that it is not and will not become a person (individually, a "Prohibited Person" and collectively "Prohibited Persons") listed on the OFAC List or otherwise subject to any other prohibitions or restriction imposed by any Prescribed Laws administered by OFAC (collectively the "OFAC Rules"). Borrower represents and covenants that it also (a) is not and will not become owned or controlled by a Prohibited Person, (b) is not acting and will not act for or on behalf of a Prohibited Person, (c) is not otherwise associated with and will not become associated with a Prohibited Person, (d) is not providing and will not provide any material, financial or technological support for or financial or other service to or in support of acts of terrorism for a Prohibited Person. Borrower will not transfer any interest in Borrower to or enter into a Lease with a Prohibited Person. Borrower shall immediately notify Lender if Borrower has knowledge that Guarantor or any member or beneficial owner of Borrower or Guarantor is or becomes a Prohibited Person or is indicted on or arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Borrower will not enter into any Lease or any other transaction or undertake any activities related to the Loan in violation of the Anti-Money Laundering Laws. Borrower shall (A) not use or permit the use of any proceeds of the Loan in any way that will violate either the OFAC Rules or Anti-Money Laundering Laws, (B) comply and cause all of its subsidiaries to comply with applicable OFAC Rules and Anti-Money Laundering Laws, (C) provide information as Lender may require from time to time to permit Lender to satisfy its obligations under the OFAC Rules and/or the Anti-Money Laundering Laws, and (D) not engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the foregoing. Borrower shall immediately notify Lender if any Tenant becomes a Prohibited Person or (1) is convicted of, (2) pleads nolo contendere to, (3) is indicted on, or (4) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering.

8. **Incorporation.** This Modification Agreement shall form a part of the Loan Agreement, the Replacement Note and the other Loan Documents, and all references to a given Loan Document shall mean that document as hereby modified. All references in the Loan Documents to the terms "*Loan Agreement*" and "*Note*" shall be deemed to mean and reference the Replacement Note and the Loan Agreement, as hereby modified, amended and supplemented.

9. **No Prejudice; Reservation of Rights.** This Modification Agreement shall not prejudice any rights or remedies of Lender under the Loan Agreement and the other Loan Documents. Lender reserves, without limitation, all rights that it has against any indemnitor, guarantor, or endorser of the Loan or the Collateral.

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10. **No Impairment.** Except as specifically hereby amended, the Loan Agreement and the other Loan Documents shall each remain unaffected by this Modification Agreement and all Loan Documents shall remain in full force and effect and are hereby ratified and affirmed. Nothing in this Modification Agreement shall impair the lien of the Lender in the Property pursuant to the Mortgage.

11. **Successors and Assigns.** The provisions of this Modification Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

12. **Ratification.** Except as expressly modified and supplemented hereby, the terms, conditions and provisions of the Loan Agreement and the other Loan Documents shall continue in effect unchanged and are hereby in all respects ratified and confirmed.

13. **Counterparts.** This Modification Agreement may be executed in multiple counterparts.

14. **Time of the Essence.** TIME IS OF THE ESSENCE WITH RESPECT TO THIS AGREEMENT.

15. **Miscellaneous.** This Agreement and any attached consents or exhibits requiring signatures may be executed in counterparts, and all counterparts shall constitute but one and the same document. If any court of competent jurisdiction determines any provision of this Agreement or any of the other Loan Documents to be invalid, illegal or unenforceable, that portion shall be deemed severed from the rest, which shall remain in full force and effect as though the invalid, illegal or unenforceable portion had never been a part of the Loan Documents. This Agreement shall be governed by the laws of the State of Illinois, without regard to the choice of law rules of that State. As used here, the word "include(s)" means "includes(s), without limitation," and the word "including" means "including, but not limited to."

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IN WITNESS WHEREOF, Borrower and Lender have executed this Modification Agreement as of the date herein above first written.

BORROWER:

SENIOR SUITES CHICAGO HEGEWISCH
LLC, an Illinois limited liability company

By: Senior Suites Chicago Corporation,
an Illinois corporation, its manager

By: [Signature]
Name: Robert Gawronski
Title: Asst. Treasurer

LENDER:

BMO HARRIS BANK N.A., a national
banking association, formerly known as Harris
Trust and Savings Bank, an Illinois banking
corporation

By: _____
Name: _____
Title: _____

Cook County Clerk's Office

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IN WITNESS WHEREOF, Borrower and Lender have executed this Modification Agreement as of the date herein above first written.

BORROWER:

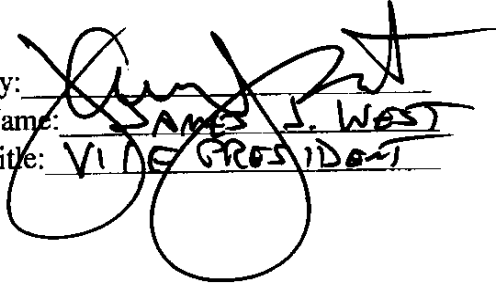
SENIOR SUITES CHICAGO HEGEWISCH LLC, an Illinois limited liability company

By: Senior Suites Chicago Corporation, an Illinois corporation, its manager

By: _____
Name: _____
Title: _____

LENDER:

BMO HARRIS BANK N.A., a national banking association, formerly known as Harris Trust and Savings Bank, an Illinois banking corporation

By: 
Name: JAMES J. WEST
Title: VICE PRESIDENT

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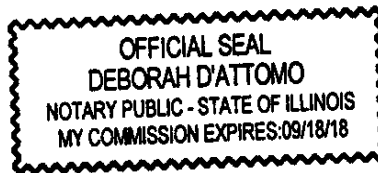
STATE OF ILLINOIS, COUNTY OF COOK, TO WIT:

I, _____, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Robert Gerasinski, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as the Asst. Treas. of Senior Suites Chicago Corporation, an Illinois corporation, the managing member of Senior Suites Chicago Hegewisch LLC, an Illinois limited liability company, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein.

Given under my hand and notarial seal this 29th day of September, 2016.

Deborah D'Attomio
Notary Public

My Commission Expires: 9-18-2018



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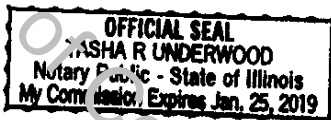
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STATE OF ILLINOIS, COUNTY OF COOK, TO WIT:

I, Tasha R Underwood Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that James J West, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as the Vice President of BMO Harris Bank N.A., a national banking association, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said banking association for the uses and purposes therein.

Given under my hand and notarial seal this 27 day of September 2016.

Tasha R Underwood
Notary Public



My Commission Expires:

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EXHIBIT A

DESCRIPTION OF PROPERTY

PARCEL I: THAT PART OF BLOCK 18 IN THE CALUMET AND CHICAGO CANAL AND DOCK COMPANY SUBDIVISION OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 AND THE SOUTH 5 ACRES OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 37 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN AND THAT PART OF THE EAST 1/2 OF SOUTH GREENBAY AVENUE AS RECORDED IN SAID SUBDIVISION, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EAST LINE OF SAID BLOCK 18, SAID POINT BEING 184.90 FEET NORTH OF THE SOUTHEAST CORNER OF SAID BLOCK 18; THENCE SOUTH ALONG SAID EAST LINE 17 FEET TO THE SOUTHERLY LINE OF THE SOUTH CHICAGO AND SOUTHERN RAILWAY COMPANY RIGHT OF WAY, THENCE SOUTHWESTERLY ALONG SAID RIGHT OF WAY LINE BEING A CURVED LINE CONVEX TO THE NORTH WEST AND HAVING A RADIUS OF 553.70 FEET WHOSE LONG CHORD FORMS AN ANGLE OF 66 DEGREES 11 MINUTES 53 SECONDS WITH THE AFORESAID EAST LINE OF BLOCK 18 WHEN MEASURED IN THE THIRD QUADRANT, AN ARC DISTANCE OF 371.89 FEET TO THE POINT OF THE INTERSECTION WITH THE CENTER LINE OF SOUTH GREENBAY AVENUE, SAID POINT BEING 20.81 FEET NORTH OF THE SOUTH LINE OF SAID BLOCK 18; THENCE NORTH ON THE CENTER LINE OF SOUTH GREENBAY AVENUE 306.15 FEET TO A POINT WHICH IS 13 FEET SOUTHERLY OF THE CENTER LINE OF THE PENNSYLVANIA RAILROAD HAMMOND BRANCH TRACK; THENCE SOUTHEASTERLY ON A CURVED LINE CONVEX TO THE SOUTH WEST AND HAVING A RADIUS OF 605.11 FEET AN ARC DISTANCE OF 359.09 FEET TO THE POINT OF BEGINNING (EXCEPT THAT PART LYING EASTERLY OF THE WESTERLY RIGHT OF WAY LINE OF AVENUE "O", SAID WESTERLY RIGHT OF WAY LINE BEING DESCRIBED AS FOLLOWS: A STRAIGHT LINE DRAWN THROUGH A POINT IN THE NORTH LINE OF THE SOUTH 371.9 FEET OF SAID BLOCK 18, WHICH POINT IS 33 FEET WEST OF THE EAST LINE OF SAID SECTION 31, AND THROUGH A POINT IN THE SOUTH LINE OF SAID BLOCK 18 WHICH POINT IS 90 FEET WEST OF THE EAST LINE OF SAID SECTION 31, IN COOK COUNTY, ILLINOIS.

PARCEL II: THE SOUTH 171.9 FEET OF BLOCK 18 OF THE SUBDIVISION MADE BY THE CALUMET AND CHICAGO CANAL AND DOCK COMPANY OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 AND THE SOUTH 5 ACRES OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 37 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT FROM SAID PREMISES THAT PART THEREOF CONVEYED BY DEED DATED AUGUST 10, 1911 TO THE SOUTH CHICAGO AND SOUTHERN RAILWAY COMPANY DESCRIBED AS FOLLOWS: TO WIT, BEGINNING AT A POINT IN THE WEST LINE OF SAID BLOCK 18, 171.9 FEET NORTHWARDLY MEASURED ALONG SAID WEST LINE FROM THE SOUTH LINE OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 31, THENCE EASTWARDLY ALONG THE NORTH LINE OF THE SOUTHERLY 171.9 FEET OF SAID BLOCK 18, 300.7 MORE OR LESS TO THE EAST LINE OF SAID SECTION, THENCE SOUTHWARDLY ALONG SAID EAST LINE 4 FEET, THENCE SOUTHWARDLY BY A CURVED LINE CONVEX TOWARD THE NORTH WEST HAVING A RADIUS OF 553.7 FEET TO A POINT IN THE WEST LINE OF SAID BLOCK 18 WHERE SAID CURVE LINE INTERSECTS THE SAID WEST LINE OF SAID BLOCK 18 AND THENCE NORTHWARDLY ALONG SAID WEST LINE TO THE POINT OF BEGINNING, (EXCEPT THAT PART TAKEN FOR AVENUE "O") IN COOK COUNTY, ILLINOIS.

PIN: 26-31-414-021-0000 and 26-31-414-032-0000

Common Address: 13550 S. Avenue O
Chicago, Illinois

UNOFFICIAL COPY**EXHIBIT B****FORM OF REPLACEMENT NOTE****REPLACEMENT PROMISSORY NOTE**

\$269,088.23

Chicago, Illinois
September 1, 2016

FOR VALUE RECEIVED SENIOR SUITES CHICAGO HEGEWISCH LLC, an Illinois limited liability company, as maker, having its principal place of business at 303 E. Wacker, Suite 2400, Chicago, Illinois 60601 ("**Borrower**"), hereby unconditionally promises to pay to BMO HARRIS BANK N.A., a national banking association, or its registered assigns, having an address at 115 S. LaSalle Street-20W, Chicago, Illinois 60603 ("**Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of Two Hundred Sixty-Nine Thousand Eighty-Eight and 23/100 Dollars (\$269,088.23), in lawful money of the United States of America, with interest thereon to be computed from the date of this Promissory Note (this "**Replacement Promissory Note**") at the Interest Rate (as hereinafter defined), and to be paid in arrears in accordance with the terms of this Note and that certain Loan Agreement dated September 14, 2000 between Borrower and Lender, as amended by that certain Modification and Amendment to Loan Agreement and Note Replacement, dated September 1, 2016, between Borrower and Lender (as the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

THIS NOTE AMENDS, RESTATES AND REPLACES IN ITS ENTIRETY THAT CERTAIN PROMISSORY NOTE, DATED AS OF SEPTEMBER 14, 2000 EXECUTED AND DELIVERED BY THE BORROWER TO THE ORDER OF THE LENDER PURSUANT TO THE LOAN AGREEMENT.

ARTICLE 1: DEFINITIONS

"**Applicable Margin**" means two and fifty-five hundredths percent (2.55%).

"**Business Day**" shall mean any day other than a Saturday, a Sunday or a legal holiday on which national banks are not open for general business in the State of Illinois.

"**Change Date**" shall mean the first day of the calendar month commencing with September 1, 2016.

"**Default Rate**" shall mean, with respect to the Loan, a rate per annum equal to the lesser of (i) the maximum rate permitted by applicable law, or (ii) five percent (5%) above the Interest Rate

"**Event of Default**" has the meaning assigned to such term in the Loan Agreement.

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“Interest Rate” means a variable rate per annum equal to the sum of (a) the LIBOR Rate, plus (b) the Applicable Margin, increasing or decreasing with each increase or decrease in the LIBOR Rate.

“LIBOR Rate” shall mean the 1-month London Interbank Offered Rate (LIBOR) as reported on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Bank from time to time) on the relevant Change Date (or, if such Change Date is not a Business Day, on the immediately prior Business Day), unless such rate is no longer available or published, in which case such rate shall be at a comparable index rate selected by the Lender with notice to the Borrower, provided that in no event shall the “LIBOR Rate” be less than 0.00%. The Lender shall determine the interest rate applicable to the Loan based on the foregoing, and its determination thereof shall be conclusive and binding except in the case of manifest error.

“Loan” shall mean the Loan evidenced by this Replacement Promissory Note.

“Maximum Legal Rate” shall mean the maximum non-usurious Interest Rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Indebtedness evidenced by this Replacement Promissory Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan

ARTICLE 2: PAYMENT TERMS

(a) **Interest Rate.**

(i) **Interest Rate.** Except as herein provided with respect to interest accruing at the Default Rate, interest on the principal balance of the Loan outstanding from time to time shall accrue at a variable rate per annum equal to the Interest Rate.

(ii) **Default Rate.** During the existence of an Event of Default, the outstanding principal balance of the Loan and, to the extent permitted by law, overdue interest in respect of the Loan, shall accrue interest at the Default Rate, calculated from the date the Default occurred which led to such an Event of Default without regard to any grace or cure periods contained herein.

(iii) **Interest Calculation.** Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360)-day year (that is, the Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the outstanding principal balance. Borrower acknowledges this will result in a higher rate of interest than if interest were calculated based on a 365-366-day year and waives any right to object to said basis of calculation. The accrual period for calculating interest due on each Monthly Payment Date shall be the calendar month immediately prior to such Monthly Payment Date.

(b) **Loan Payments.**

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(i) **Payment Before Maturity Date.**

(A) **Interest.** Commencing on October 1, 2016, and on the first day of each month thereafter, Borrower shall pay to Lender, equal monthly principal payments in the amount of One Thousand Four Hundred Ninety-Four and 94/100 Dollars (\$1,494.94), plus accrued interest (in arrears) on the outstanding principal balance of the Loan at the Interest Rate.

(B) **Late Payment Charge.** If any principal, interest or any other sum due under the Loan Documents, other than the payment of principal due on the Maturity Date or a payment required pursuant to Section 2.4.3, is not paid by Borrower on the date on which it is due and such payment is not made within five (5) days after said payment is due, Borrower shall pay to Lender upon demand a late charge ("**Late Charge**") in an amount equal to the lesser of five percent (5%) of such unpaid sum or the maximum amount permitted by applicable Law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents.

(C) **Payment on Maturity Date.** Borrower shall pay to Lender on September 1, 2021 (the "**Maturity Date**") the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder, the Mortgage and the other Loan Documents.

(c) **Place and Application of Payments.** All payments of principal of and interest on the Loan, and of all other indebtedness evidenced hereby or payable by Borrower under the Loan Agreement and the other Loan Documents, shall be made by Borrower to the Lender by no later than 12:00 p.m. (Chicago time) on the due date thereof at the office of the Lender in Chicago, Illinois (or such other location as the Lender may designate to Borrower), for the benefit of the Lender(s) entitled thereto. Any payments received after such time shall be deemed to have been received by the Lender on the next Business Day. All such payments shall be made in U.S. Dollars, in immediately available funds at the place of payment, in each case without set-off or counterclaim.

Anything contained herein to the contrary notwithstanding, all payments and collections received in respect of the indebtedness evidenced hereby and all proceeds of any collateral securing such indebtedness received, in each instance, by the Lender after acceleration or the final maturity of the indebtedness evidenced hereby shall be remitted to the Lender and distributed as follows:

(i) first, to the payment of any outstanding costs and expenses incurred by the Lender, and any security trustee therefor, in monitoring, verifying, protecting, preserving or enforcing the liens on the collateral described in the Mortgage and the other Loan Documents, in protecting, preserving or enforcing rights under the Loan Documents, and in any event including all costs and expenses of a character which Borrower has agreed to pay the Lender pursuant to the Loan Documents;

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(ii) second, to the payment of any outstanding interest, Late Charges and fees due under the Loan Documents to be allocated pro rata in accordance with the aggregate unpaid amounts owing to each holder thereof;

(iii) third, pari passu to the payment or prepayment of principal on the Loan;

(iv) fourth, to the payment of all other unpaid indebtedness, obligations, and liabilities of Borrower secured by the Loan Documents to be allocated pro rata in accordance with the aggregate unpaid amounts owing to each holder thereof; and

(v) fifth, to Borrower or whoever else may be lawfully entitled thereto

ARTICLE 3: DEFAULT AND ACCELERATION

The Debt shall become immediately due and payable at the option of Lender upon the occurrence of an Event of Default or as otherwise set forth in the Loan Agreement.

ARTICLE 4: LOAN DOCUMENTS

This Replacement Promissory Note is secured by the Mortgage and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Agreement, the Mortgage and the other Loan Documents are hereby made part of this Replacement Promissory Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Replacement Promissory Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

ARTICLE 5: SAVINGS CLAUSE

Notwithstanding anything to the contrary, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

ARTICLE 6: NO ORAL CHANGE

This Replacement Promissory Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or

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Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 7: WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment of this Replacement Promissory Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Replacement Promissory Note, the Loan Agreement or the other Loan Documents made by agreement between Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower or any other Person who may become liable for the payment of all or any part of the Debt under this Replacement Promissory Note, the Loan Agreement or the other Loan Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Replacement Promissory Note, the Loan Agreement or the other Loan Documents. If Borrower is a partnership or limited liability company, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the Persons comprising the partnership or limited liability company, and the term "Borrower," as used herein, shall include any alternate or successor partnership or limited liability company, but any predecessor partnership or limited liability company and its partners or members shall not thereby be released from any liability. If Borrower is a corporation, the agreements contained herein shall remain in full force and be applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation, and the term "Borrower," as used herein, shall include any alternative or successor corporation, but any predecessor corporation shall not be relieved of liability hereunder. Nothing in the foregoing sentence shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership, limited liability company or corporation, which may be set forth in the Loan Agreement, the Mortgage or any other Loan Document.

ARTICLE 8: TRANSFER

Upon the transfer of this Replacement Promissory Note, Borrower hereby waiving notice of any such transfer, Lender may deliver all the collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights herein or under applicable law given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred.

ARTICLE 9: USURY SAVINGS

This Replacement Promissory Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of

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being in excess of the Maximum Legal Rate. If by the terms of this Replacement Promissory Note or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

ARTICLE 10: RECOURSE

Except as otherwise expressly set forth in this Article 10, none of Borrower, or any director, officer, manager, member, partner, shareholder, trustee, trust beneficiary, or employee of Borrower, shall have personal liability under this Note or any other Loan Document for the repayment of the indebtedness evidenced by this Replacement Promissory Note or for the performance of any other obligations of Borrower under the Loan Documents, and Lender's only recourse for the satisfaction of such indebtedness and the performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Property and any other collateral held by Lender as security for such indebtedness. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against any guarantor under any Loan Document.

Notwithstanding the foregoing provisions of this Article 10, nothing herein contained shall limit or restrict the ability of the Lender to seek or obtain a judgment against the Borrower for damages caused by the Borrower as a direct consequence of the occurrence of any of the events set forth below:

- (i) Borrower's fraud or material misrepresentation;
- (ii) the intentional misapplication by Borrower of insurance or condemnation proceeds;
- (iii) the Borrower committing or suffering to occur intentional waste or intentional damage to the Real Estate;
- (iv) Borrower's failure to comply with provisions of the Mortgage prohibiting the voluntary sale or further encumbering of the collateral;
- (v) Borrower's failure to apply proceeds of rents and other income of the collateral toward the costs of maintenance and operation of the Real Estate and to the payment of taxes, lien claims, insurance premiums and debt service and other indebtedness to the extent that the Mortgage or other Loan Documents required such rents and income to be so applied;
- (vi) Borrower's collection of rentals for periods of more than one month in advance under leases of the Real Estate;

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(vii) the Borrower's failure to pay any loss, liability or expense (including reasonable attorney's fees) incurred by Lender or any of its affiliates arising out of any claim or allegation made by Borrower, its successors or assigns, that this Note or the Loan Documents establish a joint venture or partnership arrangement between Borrower and Lender or that for any purpose this Note is not recognized as debt;

(viii) the Borrower's indemnification obligations under the Loan Agreement; or

(ix) any liability or claim relating to the misapplication or mishandling of any security deposits or other tenant deposits; and

provided further, that the foregoing limitations on Borrower's personal liability with respect to principal and interest shall not impair the validity of the indebtedness secured by Lender's collateral or the lien on or security interest in the collateral or the right of Lender as mortgagee or secured party to foreclose and/or enforce the collateral after default by Borrower. In the event any party shall have guaranteed all or part of the Loan by separate written guaranty, none of the foregoing limitations on Borrower's personal liability for payment of principal and interest shall modify, diminish or discharge the personal liability of any such guarantor as set forth in any such written guaranty. None of the foregoing limitations on Borrower's personal liability shall modify, diminish or discharge the personal liability of Borrower or any individual under any indemnification provisions of the Mortgage or any of the other Loan Documents. Nothing herein shall be deemed to be a waiver of any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provision of the Bankruptcy Reform Act, as amended, to file a claim for the full amount of the debt owing to Lender by Borrower or to require that all collateral shall continue to secure all of the indebtedness owing to Lender in accordance with this Note, the Mortgage and the provisions of the Loan Agreement relating to the Loan.

ARTICLE 11: GOVERNING LAW

THIS REPLACEMENT PROMISSORY NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. BORROWER AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY COURT OF COMPETENT JURISDICTION LOCATED IN THE CITY OF CHICAGO AND STATE OF ILLINOIS IN CONNECTION WITH ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS REPLACEMENT PROMISSORY NOTE AND THE OTHER LOAN DOCUMENTS.

ARTICLE 12: NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

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IN WITNESS WHEREOF, Borrower has duly executed this Replacement Promissory Note as of the day and year first above written.

BORROWER:

**SENIOR SUITES CHICAGO HEGEWISCH
LLC, an Illinois limited liability company**

By: Senior Suites Chicago Corporation, an
Illinois corporation

By: _____

Name: _____

Title: _____

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EXHIBIT C

CHANGES TO BORROWER'S ORGANIZATION STRUCTURE

NONE

**COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____**

Property of Cook County Clerk's Office