

# UNOFFICIAL COPY

Doc#: 1733346270 Fee: \$72.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 11/29/2017 01:16 PM Pg: 1 of 13

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**THIS DOCUMENT WAS  
PREPARED BY AND AFTER  
RECORDING RETURN TO:**

**Clark Hill PLC  
130 E. Randolph Street, Suite 3900  
Chicago, Illinois 60601  
Chad M. Poznansky, Esq.**

*This space reserved for Recorder's use only*

## SECOND MODIFICATION OF LOAN DOCUMENTS

**THIS SECOND MODIFICATION OF LOAN DOCUMENTS** (this "Agreement") is made as of the 22nd day of November, 2017, by and among **MILWAUKEE PENSACOLA BUILDING, LLC**, an Illinois limited liability company ("Borrower"), **JEFFREY CAGAN, MICHAEL DANIELS and JOSEPH GOTTESMAN** (collectively, "Guarantor"), and **FIRST MIDWEST BANK**, an Illinois banking association, its successors and assigns ("Lender").

### RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Nine Hundred Thousand and 00/100 Dollars (\$900,000.00) pursuant to the terms and conditions of a Loan Agreement dated as of November 25, 2014, between Borrower and Lender, (as amended, supplemented or modified from time to time, the "Loan Agreement," all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated November 25, 2014, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, (i) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated November 25, 2014, from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on January 22, 2015, as Document No. 1502242047 and as modified by that certain Modification of Loan Documents dated December 1, 2016 and recorded with the Recorder's Office on January 30, 2017 as Document No. 1703045006 (collectively, "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and Leases dated November 25, 2014, from Borrower to Lender and recorded in the Recorder's Office on January 22, 2015, as Document No. 1502242048 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated November 25, 2014, from Borrower and Guarantor to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing,

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securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty of Payment dated November 25, 2014 from Guarantor to Lender (the "Guaranty").

D. Borrower desires to amend the Loan Documents in order to extend the Maturity Date (as defined in the Loan Agreement), increase the Loan Amount, and provide for a non-revolving line of credit and such other terms and conditions set forth herein.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date.** The Maturity Date shall be November 25, 2020. Any reference to Maturity Date in the Loan Documents shall mean November 25, 2020, unless otherwise extended or renewed by the parties hereto

2. **Loan Amount.** The definition of "Loan Amount" in Section 1.1 of the Loan Agreement shall be deleted in its entirety and replaced with the following:

"Loan Amount" shall mean the lesser of (i) the principal sum of NINE HUNDRED SIXTY TWO THOUSAND FIVE HUNDRED AND NO/100 Dollars (\$962,500.00) (the "Maximum Commitment"), or (ii) the aggregate principal amount of all direct advances of the proceeds of the Note."

Any and all references in the Note, the Loan Agreement or any other Loan Document to NINE HUNDRED THOUSAND AND 00/100 DOLLARS (\$900,000.00) shall be replaced with NINE HUNDRED SIXTY TWO THOUSAND FIVE HUNDRED AND 00/100 Dollars (\$962,500.00).

3. **Non-Revolving Line of Credit.** Section 3.1 of the Loan Agreement shall be deleted in its entirety and replaced with the following:

"3.1 **Agreement to Borrow and Lend.** Borrower agrees to borrow from Lender, and Lender agrees to lend to Borrower an amount not to exceed the Loan Amount on the terms of and subject to the conditions of this Agreement.

(a) *Loan Balance.* The current balance of the Loan is \$900,000.00.

(b) *Future Advances.* Provided no Event of Default has occurred under this Agreement or under any Loan Document, and no event, circumstance or condition has occurred or exists which, with the passage of time or the giving of notice, would constitute an Event of Default under this Agreement or under the Loan, Borrower may

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request additional advances (“Advances”), at such times as Borrower may from time to time request for the purpose of funding additional future improvements and reimbursement to Borrower for prior improvements incurred since acquisition.”

4. **Debt Service Ratio.** The definition of Debt Service Ratio shall be deleted in its entirety and replaced with the following:

**“Debt Service Ratio.** During any calendar year ending December 31 (a “Year”), the ratio of Operating Cash Flow (as defined below) during such Year to Debt Service (as defined below). As used herein, “Operating Cash Flow” shall mean for any period all rental income actually received by Borrower during such period arising from the ownership and operation of the Premises (excluding tenant security deposits and rent paid during such period by any tenant for more than three months of rental obligations) less the sum of all costs, taxes, expenses and disbursements of every kind, nature or description actually paid or due and payable during such period in connection with the leasing, management, operation, maintenance and repair of the Premises and of the personal property, fixtures, machinery, equipment, systems and apparatus located therein or used in connection therewith, but excluding (i) non-cash expenses, such as depreciation and amortization costs, (ii) state and federal income taxes, (iii) the non-current portion of capital expenditures determined in accordance with generally accepted accounting principles, (iv) debt service payable on the Loan, and (v) principal and interest payments on other loans expressly permitted by Lender. In determining Operating Cash Flow, (a) extraordinary items of income, such as those resulting from casualty or condemnation or lease termination payments of tenants, shall be deducted from income and (b) real estate taxes and insurance premiums shall be treated as expenses to the extent of an annualized amount based upon the amount of the most recent bill for real estate taxes and insurance premiums. As used herein, “Debt Service” for any Year shall equal the sum of all principal and interest payments on the Loan and any other indebtedness of Borrower that is due and payable during such Year. Operating Cash Flow shall be calculated by Lender based on the financial information provided to Lender by Borrower and independently verified by Lender and the calculations so verified shall be final and binding upon Borrower and Lender. Debt Service shall be calculated using total principal outstanding at each year end, a 30-year amortization schedule and a rate of interest equal to the Note Interest Rate at each year end. Debt Service shall be calculated by Lender based on the financial information provided to Lender by Borrower and independently verified by Lender and the calculations so verified shall be final and binding upon Borrower and Lender, absent manifest error.”

5. **Notice.** Section 26 of the Mortgage shall be deleted in its entirety and replaced with the following:

“26. **Notices.** Any notices, communications and waivers under this Mortgage shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) sent by overnight express carrier, addressed in each case as follows:

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To the Lender  
 First Midwest Bank  
 770 East Dundee Road  
 Arlington Heights, IL 60004-1562  
 Attn: Brian Ruos, VP – Commercial Real Estate

With a copy to:  
 Clark Hill PLC  
 130 E. Randolph Street, Suite 3900  
 Chicago, Illinois 60601  
 Attn: Chad M. Poznansky, Esq.

To the Mortgagor:  
 Milwaukee Pensacola Building, LLC  
 3856 Oakton Street  
 Skokie, IL 60076  
 Attention: Jeffrey Cagan

With copy to:  
 Larry A. Chambers, Ltd.  
 3856 Oakton St.  
 Skokie, IL 60076  
 Attn: Larry A. Chambers, Esq.

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.”

6. **Maximum Indebtedness.** Section 37(j) of the Mortgage shall be deleted in its entirety and replaced with the following:

“(j) **Maximum Indebtedness.** Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to One Million Nine Hundred Twenty Five Thousand and No/100 Dollars (\$1,925,000.00); provided, however, in no event shall the Lender be obligated to advance funds in excess of the face amount of the Note.”

7. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 1412-SS0017011 (the "**Title Policy**"), as of the date this Agreement is recorded, reflecting the recording of this Agreement, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

8. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

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(b) There is currently no Event of Default (as defined in the Loan Agreement) under the Note, the Mortgage or the other 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 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 Agreement, 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, 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 Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement 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 Agreement has been duly executed and delivered on behalf of Borrower.

9. **Conditions Precedent.** This Agreement shall become effective upon the date on which Lender shall have received:

(a) This Agreement, duly executed and delivered by Borrower and Guarantors;

(b) An Amended and Restated Promissory Note of even date herewith in the principal amount of NINE HUNDRED SIXTY TWO THOUSAND FIVE HUNDRED AND NO/100 Dollars (\$962,500.00) made payable by Borrower to the order of Lender;

(c) Satisfactory evidence that all corporate and other proceedings that are necessary in connection with this Agreement have been taken to Lender's and its counsel's satisfaction, and Lender and such counsel shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request;

(d) Reimbursement of all fees and expenses of Lender's outside and in-house counsel in connection with this Agreement including an extension fee equal to One Thousand Two Hundred Twenty Seven and no/100 Dollars (\$1,227.00); and

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(e) Such other information and documents as may reasonably be required by Lender and its counsel in connection with this Agreement.

10. **Release of Lender.** In consideration of the Lender's execution of this Agreement as provided below, the Borrower does, on its behalf and on behalf of any successors and assigns, hereby fully and forever release, remise and forever discharge the Lender and its past and present officers, directors, employees, agents, attorneys, predecessors-in-interest, parents, subsidiaries, affiliates and assigns of and from any and all actions, claims, and causes of action, suits, debts, liabilities, dues, accounts, demands, obligations, costs, expenses, losses, damage and indemnities of every kind or nature whatsoever, whether known or unknown, suspected or unsuspected, contingent or fixed, which Borrower has, may have had, owns or holds, or at any time heretofore had, may have had, owned or held, whether based on contract, tort, statute, or other legal or equitable theory of recovery, including, but not limited to, the Loan Agreement, the Note, the other Loan Documents or this Agreement.

11. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty. In addition, Guarantor hereby expressly and unconditionally waives, releases, and discharges any and all rights or claims under the Illinois Surety Act, 740 ILCS 155/0.01 et. seq. ("Illinois Surety Act"), and further acknowledges and agrees that Lender has no duty or obligation to Guarantor under the Illinois Surety Act.

12. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay 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.

13. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

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

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understand this Agreement, 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.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

(i) The recitals are hereby made a part of this Agreement.

[signature page follows.]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

**LENDER:**

**FIRST MIDWEST BANK**, an Illinois banking association

By: [Signature]  
Name: William R. No. 5  
Title: V.P.

**BORROWER:**

**MILWAUKEE PENSACOLA BUILDING, LLC**, an Illinois limited liability company

By: LUCKY NORTHWEST HOLDING, LLC, an Illinois limited liability company, its Manager

By: \_\_\_\_\_  
Jeffrey Cagan, Manager

**GUARANTOR:**

\_\_\_\_\_  
Jeffrey Cagan

\_\_\_\_\_  
Michael Daniels

\_\_\_\_\_  
Joseph Gottesman

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement dated as of the day and year first above written.

**LENDER:**


**FIRST MIDWEST BANK**, an Illinois banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

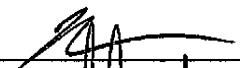
**BORROWER:**


**MILWAUKEE PENSACOLA BUILDING, LLC**, an Illinois limited liability company

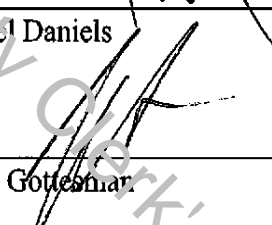
By: **LUCKY NORTHWEST HOLDING, LLC**, an Illinois limited liability company, its Manager

By:  \_\_\_\_\_  
Jeffrey Cagan, Manager

**GUARANTOR:**

 \_\_\_\_\_  
Jeffrey Cagan

 \_\_\_\_\_  
Michael Daniels

 \_\_\_\_\_  
Joseph Gottesman

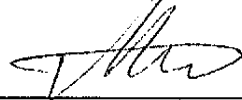
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STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

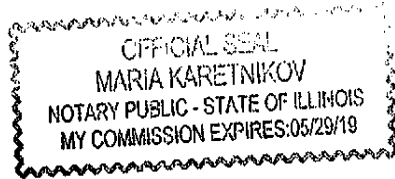
I, Maria Karetnikov, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Brian Rees, VP of **FIRST MIDWEST BANK**, an Illinois banking association, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act, and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22 day of NOV, 2017.



Notary Public

My Commission Expires: 5/29/19



STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

I, Larry A. Chambers, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jeffrey Cagan, Manager of Lucky Northwest Holding, LLC, an Illinois limited liability company, Manager of **MILWAUKEE PENSACOLA BUILDING, LLC**, an Illinois limited liability company, is 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 and delivered said instrument as his own free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22nd day of November, 2017.



Notary Public

My Commission Expires: 

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STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF COOK     )

I, Larry A. Chambers, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **JEFFREY CAGAN** is 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 and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22nd day of November, 2017.

Larry A. Chambers  
\_\_\_\_\_  
Notary Public

My Commission Expires:



STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF COOK     )

I, Larry A. Chambers, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **MICHAEL DANIELS** is 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 and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26th day of November, 2017.

Larry A. Chambers  
\_\_\_\_\_  
Notary Public

My Commission Expires:



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STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF COOK     )

I, Larry A. Chambers, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **JOSEPH GOTTESMAN** is 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 and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22nd day of November, 2017.

Larry A. Chambers  
Notary Public

My Commission Expires: \_\_\_\_\_



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## EXHIBIT A

### THE PROPERTY

LOTS 10 AND 11 IN BOSWELL'S SUBDIVISION OF BLOCK 4 (EXCEPT STREETS) IN LEWIS' ADDITION TO MONTROSE, A SUBDIVISION OF THE NORTH 1/8 OF THE SOUTHEAST 1/4 OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS OF THE REAL ESTATE: 4338 N. Milwaukee Ave., Chicago, IL 60641

PERMANENT IDENTIFICATION NUMBER: 13-16-400-041-0000

Property of Cook County Clerk's Office