

# UNOFFICIAL COPY

Doc#: 1824233089 Fee: \$62.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 08/30/2018 10:20 AM Pg: 1 of 8

1820801 2/2  
After recording return to:

Beverly Bank & Trust Company, N.A.  
9801 W. Higgins Rd., 4<sup>th</sup> Floor  
Rosemont, Illinois 60018  
Attn: Loan Operations

PRAIRIE TITLE  
6821 W. NORTH AVE.  
OAK PARK, IL 60301

*This Space for Recorder's Use Only*

## FIRST LOAN MODIFICATION AGREEMENT

THIS FIRST LOAN MODIFICATION AGREEMENT (this "Agreement") is made this \_\_\_ day of August, 2018, by and between 42<sup>ND</sup> & MICHIGAN RESIDENCES LLC, an Illinois limited liability company ("Borrower"), JOHN A. LOWENSTEIN, AMY H. LOWENSTEIN AND THE AHL INVESTMENT TRUST U/A/D 12/7/9 (collectively, "Guarantors" and together with Borrower, "Obligors"), and BEVERLY BANK & TRUST COMPANY, N.A., a national banking association ("Bank").

### RECITALS:

**WHEREAS**, on July 18, 2018 Bank made a certain mortgage loan (the "Loan") in the principal amount of \$2,750,000 to Borrower;

**WHEREAS**, in order to evidence and secure the Loan, Borrower made, executed and delivered (or caused to be made, executed and delivered) to Bank the following documents, each of which, is dated July 18, 2018 (collectively, the "Loan Documents"):

- (i) Promissory Note in the principal sum of Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000);
- (ii) Mortgage, Security Agreement, Financing Statement and Assignment of Rents (the "Mortgage") recorded on July 27, 2018 with the Cook County Recorder (the "Recorder") as document No. 1820819075 encumbering the real property described therein (the "Property");
- (iii) Assignment of Leases and Rents recorded on July 27, 2018 with the Recorder as document No. 1820819076 encumbering the Property;

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- (iv) UCC Financing Statement recorded on August 2, 2018 with the Cook County Recorder as document No. 1821417061 and filed with the Illinois Secretary of State on July \_\_\_\_, 2018 as document No. \_\_\_\_\_;
- (v) Environmental Compliance and Indemnity Agreement;
- (vi) Limited Guaranty of Payment (the "Guaranty");
- (vii) Funding and Security Agreement (the "Funding Agreement"); and
- (viii) Such other usual and customary internal loan documents;

**WHEREAS**, any capitalized term not defined herein shall have the meaning ascribed to such term in the Funding Agreement;

**WHEREAS**, as of August \_\_\_\_, 2018 the unpaid Principal Amount of the Loan was \$ \_\_\_\_\_ (together with all accrued and unpaid interest thereon, the "Existing Indebtedness");

**WHEREAS**, pursuant to the Funding Agreement, the entire amount of the proceeds of Loan were disbursed to Borrower at the Initial Funding, subject however to the establishment of the Hold Back Account, in which \$145,000 of such Loan proceeds were deposited and not made available to Borrower;

**WHEREAS**, further pursuant to the Funding Agreement, upon the fulfillment of the Subsequent Funding Conditions by Borrower, Bank shall release the Hold Back Account and make the proceeds thereof available to Borrower for the purpose of funding and closing of the 4209 Contract (the "Closing"); such that upon the Closing *inter alia*, (i) Borrower shall have acquired the condominium unit known as 4209 S. Michigan Ave., Unit-2S, Chicago, Illinois 60653 (together with its undivided interest in the common elements, the "4209-2S Unit"), (ii) Bank shall have acquired a first mortgage security interest therein and (iii) the Removal shall occur;

**WHEREAS**, Obligors represent and warrant to Bank that (i) no Default exists under the Loan Documents, and no event exists which, upon the passage of time would create a Default under the Loan Documents, and (ii) all other Subsequent Funding Conditions have been (or, at the Closing, will be) one hundred percent (100%) fulfilled and satisfied by Borrower; and

**WHEREAS**, based upon such representation and warranty, and subject to the terms and conditions herein stated, the Bank shall release the Hold Back Account to cause the Subsequent Funding.

**NOW THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

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1. **Recitals.** The recitals hereto are true and correct and incorporated herein by reference as fully and with the same force and effect as if each and every term, provision and condition thereof was specifically recited herein at length.

2. **Existing Indebtedness.** Obligor, and each of them, reaffirm the Existing Indebtedness, acknowledge and agree the Existing Indebtedness is and remains a valid obligation of Obligor and warrant to Bank that, as of the date hereof, there are no claims, setoffs or defenses to payment of the Existing Indebtedness by any of the Obligor.

3. **Subsequent Funding.** Concurrently upon Closing and otherwise subject to the terms and conditions herein stated, Bank shall release the Hold Back Account and cause the Subsequent Funding, by disbursement (via wire transfer) of \$145,000 (net of Bank's attorney fees and any other closing costs, including title and escrow charges) into the escrow established at Prairie Title Services, Inc. for the Closing, and otherwise pursuant to the Bank's Money Lender Escrow Instructions.

4. **Removal.** Concurrently upon Closing, Borrower shall be deemed to own all of the Real Estate, including All the Vasari (as those terms are defined in the Funding Agreement) and therefore, concurrently therewith, shall cause the (i) recording of the subject Notice of Removal of Property with the Recorder, and otherwise cause the Removal to occur, such that the Mortgaged Property at all times thereafter shall be "de-converted", i.e., removed from the Illinois Condominium Property Act (765 ILCS 605/1 *et seq.*); and (ii) issuance of the Endorsement.

5. **Modification of the Mortgage.** Effective as of the date hereof, Section 1.1 of the Mortgage is amended and modified as follows:

(i) The definition of "Land" shall be amended and modified such that "Land", and all references to it, shall be deemed to include the real property previously defined herein as the 4209-2S Unit, and legally described as follows:

UNIT 4209-2S IN THE VASARI ON MICHIGAN AVENUE CONDOMINIUM AS DELINEATED AND DEFINED ON THE PLAT OF SURVEY OF THE FOLLOWING DESCRIBED PARCEL OF REAL ESTATE: LOTS 23 AND 24, (EXCEPT THAT PART THEREOF TAKEN FOR WIDENING MICHIGAN AVENUE) IN BLOCK 12 IN PRYOR AND HOPKIN'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, LYING EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS, WHICH SURVEY IS ATTACHED AS EXHIBIT D TO THE DECLARATION OF CONDOMINIUM RECORDED NOVEMBER 10, 2005 AS DOCUMENT NUMBER 0531403030 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS.

[COMMONLY KNOWN AS: 4209 S. MICHIGAN AVE. UNIT 2S, CHICAGO, IL 60653  
PERMANENT INDEX NUMBER: 20-03-120-031-1011]

The definition of "Mortgaged Property" shall be accordingly amended and modified such that "Mortgaged Property", and all references to it, shall be deemed to include the 4209-2S Unit; *provided however*, upon the occurrence of the Removal, no part of the Land or Mortgaged Property shall constitute a condominium, such Land and Mortgaged Property

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having reverted to a single unified parcel comprised of the tract of real property described in Exhibit A attached hereto and incorporated herein by reference.

(ii) As a result of the foregoing, the definition of "Land" now existing in the Mortgage and identified on Exhibit A thereof is deleted in its entirety and substituted in its place shall be the tract of real property described on said Exhibit A attached hereto.

**6. Reaffirmation of the Guaranty.** Guarantors hereby: (i) consent to the execution by Borrower and Bank of this Agreement and any and all documents executed in connection herewith; (ii) acknowledge and agree that the indebtedness guaranteed by Guarantors under the Guaranty includes all of the obligations and liabilities owing from Borrower to Bank under the Loan Documents, as amended; (iii) reaffirm, assume, and binds themselves, in all respects to all of the obligations, liabilities, covenants, terms and conditions that are contained in the Guaranty; (iv) agree that all such obligations and liabilities under the Guaranty, as may be modified and amended by this Agreement, shall continue in full force and effect and shall not be discharged, limited, impaired, or effected in any manner whatsoever; and (v) represent and warrant that each of the representations and warranties made by Guarantors in the Guaranty and the other Loan Documents remains true and correct as of the date hereof.

**7. Waiver.** Obligor hereby waive and affirmatively agree not to challenge or otherwise pursue any or all defenses, counterclaims, causes of action, setoffs or other rights they may have now or in the future, to contest (i) any term, provision, condition or covenant of this Agreement or any of the Loan Documents, as amended; (ii) the security interests granted to in any collateral securing the Loan; or (iii) the conduct of Bank in administering the Loan.

**8. Bank Expenses.** Obligor agree to pay all costs, fees and expenses, including, but not limited to, attorneys' fees and expenses, incurred by Bank in connection with the preparation, closing and perfection of this Agreement. In addition, Obligor agree to pay on demand all costs, fees and expenses, including without limitation reasonable attorneys' fees and costs in the event of enforcement by Bank of any of the terms and provisions of this Agreement.

**9. Ratification.** To the extent not inconsistent with this Agreement, the Loan Documents are hereby ratified, confirmed and approved and are and shall remain in full force and effect. Each of the Loan Documents is hereby modified and amended so that all references to such Documents (and/or any terms therein), shall be deemed to be a reference to the Loan Documents, (and/or any such terms), as same are hereby modified and amended.

**10. Agreement Controls.** In the event there are any inconsistencies between the terms and provisions of this Agreement and the terms and provisions of any of the Loan Documents, the terms and provisions of this Agreement shall control.

**11. Governing Law.** This Agreement and the other Loan Documents and all matters relating thereto shall be governed by and construed and interpreted in accordance with the internal laws of the State of Illinois.

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12. **Construction.** This Agreement shall not be construed more strictly against Bank merely by virtue of the fact that the same has been prepared by Bank or its counsel, it being recognized that Borrower, Guarantor and Bank have all contributed substantially and materially to the preparation of this Agreement.

13. **Captions.** The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

14. **Enforceability.** Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

15. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any and all prior agreements, discussions, negotiations, or understandings, whether oral or written, between the parties with respect to the subject matter hereof.

16. **Amendment.** No amendment, waiver or modification of this Agreement shall be binding unless it is in writing signed by the parties hereto and dated subsequent to the date hereof.

17. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the representatives, heirs, successors and assigns of each of the parties hereto.

18. **Counterparts.** This Agreement may be executed simultaneously or in multiple counterparts, and by electronic/pdf format, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one instrument.

[The next page is the signature page]

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IN WITNESS WHEREOF, Borrower, Guarantor and Bank have executed this First Loan Modification Agreement as of the date first above written.

**BORROWER:**

42<sup>ND</sup> & Michigan Residences LLC, an Illinois limited liability company

By: 312 Real Estate Management LLC, an Illinois limited liability company, sole Manager

By: \_\_\_\_\_  
Raphael Lowenstein, its Manager

**GUARANTORS:**

\_\_\_\_\_  
John A. Lowenstein

\_\_\_\_\_  
Amy H. Lowenstein

THE AHL INVESTMENT TRUST U/A/D 12/7/90

By: \_\_\_\_\_  
Amy H. Lowenstein, Co-Trustee

**BANK:**

BEVERLY BANK & TRUST COMPANY, N.A., a national banking association

By: \_\_\_\_\_  
Leonard J Dzielski Jr., SVP

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IN WITNESS WHEREOF, Borrower, Guarantor and Bank have executed this First Loan Modification Agreement as of the date first above written.

**BORROWER:**

42<sup>ND</sup> & Michigan Residences LLC, an Illinois limited liability company

By: 312 Real Estate Management LLC, an Illinois limited liability company, sole Manager

By: \_\_\_\_\_  
Raphael Lowenstein, its Manager

**GUARANTORS:**

\_\_\_\_\_  
John A. Lowenstein

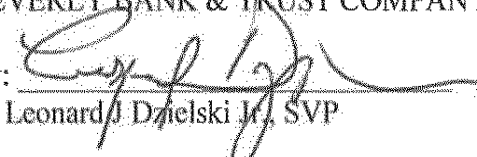
\_\_\_\_\_  
Amy H. Lowenstein

THE AHL INVESTMENT TRUST U/A/D 12/7/90

By: \_\_\_\_\_  
Amy H. Lowenstein, Co-Trustee

**BANK:**

BEVERLY BANK & TRUST COMPANY, N.A., a national banking association

By:   
Leonard J. Dzielski Jr., SVP

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## LEGAL DESCRIPTION

**LOTS 23 AND 24, (EXCEPT THAT PART THEREOF TAKEN FOR WIDENING MICHIGAN AVENUE) IN BLOCK 12 IN PRYOR AND HOPKIN'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS**

**COMMONLY KNOWN AS: 4201 S. Michigan Avenue, Chicago, IL 60653**

**PERMANENT INDEX NUMBER: 20-03-120-031-1001, 20-03-120-031-1002, 20-03-120-031-1003, 20-03-120-031-1004, 20-03-120-031-1005, 20-03-120-031-1006, 20-03-120-031-1007, 20-03-120-031-1008, 20-03-120-031-1009, 20-03-120-031-1010, 20-03-120-031-1011, 20-03-120-031-1012, 20-03-120-031-1013, 20-03-120-031-1014, 20-03-120-031-1015, 20-03-120-031-1016, 20-03-120-031-1017, 20-03-120-031-1018, 20-03-120-031-1019, 20-03-120-031-1020, 20-03-120-031-1021**

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