

UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Scott M. Lapins
Much *Shelist*, P.C.
191 North Wacker Drive
Suite 1800
Chicago, Illinois 60606

Doc#: 1826106198 Fee: \$64.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 09/18/2018 12:52 PM Pg: 1 of 9

6TT 40033917DD-1

This space reserved for Recorder's use only

MODIFICATION OF MORTGAGE AND LOAN DOCUMENTS

THIS MODIFICATION OF MORTGAGE AND LOAN DOCUMENTS (this "**Modification**") is dated September 11, 2018, by and among 2102 NATCHEZ, LLC, an Illinois limited partnership ("**Borrower**"), BARTLOMIEJ PRZYJEMSKI (the "**Guarantor**"), and GREAT SOUTHERN BANK, together with its successors and assigns ("**Lender**").

RECITALS:

A. Lender has agreed to make a loan ("**Loan**") to Borrower in the original principal amount of **SEVENTEEN MILLION SIX HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS** (\$17,650,000.00) pursuant to the terms of a Construction Loan Agreement dated October 12, 2017 by and between Borrower and Lender. The Loan is evidenced by a certain Promissory Note dated April 29, 2018 made by Borrower and payable to Lender in the original principal amount of **SEVENTEEN MILLION SIX HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS** (\$17,650,000.00) (the "**Note**").

B. The Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement, Assignment of Rents and Leases, and Fixture Filing dated October 12, 2017 from Borrower to Lender and recorded with the Cook County, Illinois Recorder (the "**Recorder's Office**") on October 17, 2017 as Document No. 1729039026 (the "**Mortgage**"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A attached hereto (the "**Property**"); (ii) that certain Assignment of Rents and Leases dated October 12, 2017 from Borrower to Lender and recorded with the Recorder's Office on October 17, 2017 as Document No. 1729089027 (the "**Assignment of Rents**"); (iii) that certain Environmental Indemnity Agreement dated October 12, 2017 from Borrower, Bartlomiej Przyjemski (the "**Guarantor**") to Lender (the "**Indemnity Agreement**"); (iv) that certain Guaranty of Payment dated October 12, 2017 from Guarantor to Lender; that certain Guaranty of Completion dated October 17, 2017 from Grantor to Lender

UNOFFICIAL COPY

(together with the Payment Guaranty, the "**Payment Guaranty**") (the "**Guaranty**"); and (v) certain other loan documents (the Loan Agreement, the Note, the Mortgage, the Assignment of Rents, the Indemnity Agreement, the Guaranty, and the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to in this Agreement as the "**Loan Documents**").

C. Borrower desires to amend the Loan Documents to extend the Maturity Date, increase the principal amount of the Loan and to modify certain payment terms, among other things, as herein set forth.

AGREEMENTS:

NOW, **THHEREFORE**, in consideration of: (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Modification); (ii) the agreements by Lender to modify the Loan Documents, as provided herein; (iii) agreement to pay Lender's reasonable expenses, including all of Lender's reasonable attorneys' fees and costs in connection with this Modification; (iv) the covenants and agreements contained herein; (v) the Guarantor's reaffirmation of the Guaranty with respect to the Loan as amended herein; and (vi) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Recitals.** The Recitals set forth above are incorporated into and made part of this Modification.

2. **Loan Amount.** The principal amount of the Loan is hereby revised to **EIGHTEEN MILLION TWO HUNDRED EIGHTY EIGHT THOUSAND AND NO/100 DOLLARS (\$18,288,000.00)**, which amount provides for additional loan proceeds of \$638,000.00.

3. **Modification of Note.** Concurrently with the execution and delivery of this Modification, Borrower shall execute and deliver to Lender a Note Modification Agreement (the "**Note Modification Agreement**"), which Note Modification Agreement shall increase the principal amount of the Loan other things, as therein set forth. Any reference in the Loan Documents to the Note shall hereafter mean the Note, as modified by the Note Modification Agreement.

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

(a) The representations and warranties in the Loan Documents are true and correct in all material respects as of the date hereof.

(b) There is currently no Event of Default (as defined in the Loan Documents) under the Loan Documents, and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Loan Documents.

UNOFFICIAL COPY

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Modification, they continue to be the legal, valid and binding obligations of Borrower and Guarantor 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, neither Borrower nor Guarantor has any claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) The execution and delivery of this Modification and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower and Guarantor. This Modification has been duly executed and delivered on behalf of Borrower and Guarantor.

5. **Consent of Guarantor and Reaffirmation of Guaranty.** Guarantor hereby consents to this Modification and the Note Modification Agreement and ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Modification. The representations and warranties of Guarantor in the Guaranty are, as of this date, true and correct in all material respects and Guarantor does not know of any default thereunder. The Guaranty, as it may have been amended, continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor does not have any claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

6. **Release by Borrower and Guarantor.** Each of Borrower and Guarantor hereby releases and forever discharges 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, in law or in equity, which Borrower or Guarantor has, may have had, own or hold, 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, relating to, or arising out of the Loan, the Note, the Loan Documents, this Modification or the Property.

7. **Waiver of Defenses.** Borrower and Guarantor each acknowledge that neither Borrower nor Guarantor has any defenses, offsets, or counterclaims under the Loan, the Note or the Loan Documents. To the extent that any such defenses, offsets, or counterclaims exist as of the date hereof, they are hereby waived and released in consideration of Borrower's and Guarantor's agreement to amend the Loan.

UNOFFICIAL COPY

8. **Expenses and Fees.** As a condition precedent to the agreements contained herein, Borrower shall pay all reasonable out-of-pocket third-party costs and expenses incurred by Lender in connection with this Modification, including, without limitation, title charges, recording fees, appraisal fees and reasonable attorneys' fees and expenses.

9. **Title Policy.** Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to loan policy no. 124212-1-40033917-201772307-21245602 (the "**Title Policy**") as of the date this Modification is recorded, reflecting the recording of this Modification increasing the coverage to \$18,288,000.00, and insuring the first priority of the lien of the Mortgage, 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.

10. **Miscellaneous.**

(a) This Modification is governed by and should be construed in accordance with the laws of the State of Illinois.

(b) This Modification may 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 Modification, 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 Modification. Each of the parties to this Modification represents that it has been advised by its respective counsel of the legal and practical effect of this Modification, and recognizes that it is executing and delivering this Modification, 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 parties state that they have read and understand this Modification, 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 Modification 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 will 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 Modification, 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 modified as set forth in this Modification. Except as expressly modified, the terms of the Loan Documents are and remain unmodified and in full force and effect.

UNOFFICIAL COPY

(e) This Modification binds and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note," the "Mortgage," the "Assignment of Rents," the "Indemnity Agreement," the "Guaranty," the "Pledge Agreement" or the "Loan Documents" contained in any of the Loan Documents should be considered to refer to the Note, the Mortgage, the Assignment of Rents, the Indemnity Agreement, the Guaranty, the Pledge Agreement and the other Loan Documents as amended from time to time. The paragraph and section headings used in this Modification are for convenience only and shall not limit the substantive provisions hereof. All words in this Modification that are expressed in the neuter gender should be considered to include the masculine, feminine and neuter genders. Any word in this Modification that is expressed in the singular or plural should be considered, whenever appropriate in the context, to include the plural and the singular.

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

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

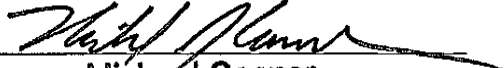
**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURES APPEAR ON FOLLOWING PAGE]**

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Modification of Mortgage and Loan Documents was executed as of the date and year set forth above.

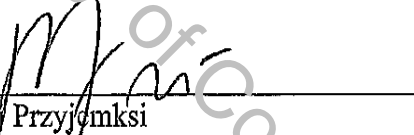
LENDER:

GREAT SOUTHERN BANK

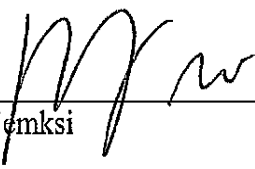
By: 
Name: Michael Casnar
Title: Vice President

BORROWER:

2102 NATCHEZ, LLC, an Illinois limited liability company

By: 
Bartłomiej Przyjemksi
Its: Manager

GUARANTOR:


Bartłomiej Przyjemksi

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael Caspar personally known to me to be a Vice President of GREAT SOUTHERN BANK, appeared before me this day in person and acknowledged that as such Vice President he signed and delivered said instrument as his own free and voluntary act on behalf of the Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 11th day of September, 2018.

Jamie A. Reid
Notary Public

My Commission Expires: 10-17-2021

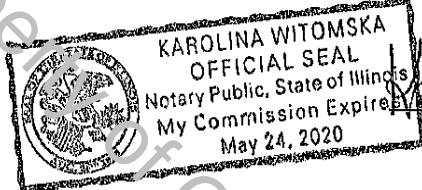


UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Bartlomiej Przyjemksi, the Manager of 2102 NATCHEZ, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the 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 11th day of September, 2018.



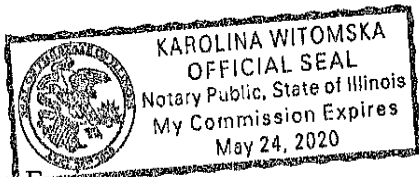
Karolina Witomska
Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Bartlomiej Przyjemksi, who 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 the 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 11th day of September, 2018.



Karolina Witomska
Notary Public

My Commission Expires: _____

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1, 4, 5, 6 AND 7 IN UNO-NATCHEZ AVENUE SCHOOL BUILDING PARCEL SUBDIVISION, BEING A RESUBDIVISION OF PART OF EAST HALF OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 13, 2017 AS DOCUMENT 1716439098, IN COOK COUNTY, ILLINOIS

Property Address: 2102 NATCHEZ AVENUE, CHICAGO, ILLINOIS

PIN No.: 13-31-205-081-0000
13-31-205-083-0000

Property of Cook County Clerk's Office