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Doc#: 1836046017 Fee: \$68.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 12/26/2018 10:14 AM Pg: 1 of 11

**This document prepared by
and after recording return to:**

Dykema Gossett PLLC
10 South Wacker Drive
Suite 2300
Chicago, Illinois 60606
Attn: Michael S. Kurtzon, Esq.

This space reserved for Recorder's use only

FIRST MODIFICATION OF LOAN DOCUMENTS

THIS FIRST MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of December 19, 2018, by and among **828 NOYES STREET LOFTS LLC**, an Illinois limited liability company ("Borrower"), **GREGORY J. DESTEFANO**, an individual, and **RICHARD E. SPINELL**, an individual (said individuals each being referred to herein as a "Guarantor" and collectively, the "Guarantors"), and **TCF NATIONAL BANK**, a national banking association, its successors and assigns ("Lender").

RECITALS:

A. Pursuant to that certain Construction and Term Loan Agreement (as amended, restated or replaced from time to time, the "Loan Agreement") dated as of June 8, 2017 by and between Borrower and Lender, Lender agreed to make a loan to Borrower in the maximum principal amount of \$8,300,000.00 (the "Loan"), which is evidenced by that certain Promissory Note dated as of June 8, 2017 made by Borrower payable to the order of Lender in the stated principal amount of the Loan (as amended, restated or replaced from time to time, the "Note").

B. The Loan is secured by (a) that certain Construction Mortgage Security Agreement, Fixture Filing and Assignment of Leases and Rents by Borrower for the benefit of Lender dated as of June 8, 2017 and recorded with the Cook County Recorder of Deeds (the "Recorder") on June 13, 2017 as Document Number 1716457125 (together with all renewals, modifications, increases and extensions thereof, the "Security Instrument"), which grants Lender a first priority security interest in and encumbers the real property and all improvements thereon as legally described on Exhibit A attached hereto and made a part hereof (the "Property"); (b) that certain Assignment of Leases and Rents by Borrower for the benefit of Lender dated as of June 8, 2017 and recorded with the Recorder on June 13, 2017 as Document Number 1716457126 (together with all renewals, modifications, increases and extensions thereof, the "ALR"); (c) that certain Environmental Indemnity Agreement by Borrower and Guarantors for the benefit of Lender dated as of June 8, 2017 (together with all renewals, modifications, increases and extensions thereof, the "Environmental Indemnity"); and (d) certain other loan documents. The Loan Agreement, the Note, the Security Instrument, the ALR, the Environmental Indemnity, and each of the other documents evidencing or securing the Loan are hereinafter referred to collectively as the "Loan Documents."

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C. In connection with the Loan, Guarantors entered into that certain Guaranty of Payment dated as of June 8, 2017 (the "Payment Guaranty"), and that certain Guaranty of Completion dated as of June 8, 2017 (the "Completion Guaranty" and together with the Payment Guaranty, the "Guaranty") for the benefit of Lender.

D. Borrower desires to increase the amount of the Loan and the Lender is willing to do so upon the terms and conditions set forth below.

AGREEMENTS:

NOW THEREFORE, in consideration of the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), and 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 true and correct and are incorporated herein by reference.

2. **Definitions.** Any capitalized terms not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

3. **Increase in Loan.** The stated principal amount of the Note is increased by \$300,000.00 (the "Loan Increase") from \$8,300,000.00 to \$8,600,000.00. Any reference in the Note, the Loan Agreement or any other Loan Document to the stated principal amount of the Note shall mean \$8,600,000.00. Any reference to the "Loan" or the "Loan Amount" shall mean \$8,600,000.00. The Loan Increase shall be used solely to pay for Tenant Improvement Costs.

4. **Disbursement of Loan Increase.**

(a) As a condition precedent to the agreements contained herein, Borrower shall have delivered to Lender the following:

(i) A copy, certified as true complete and correct, of a fully-executed lease between Borrower and Bad Dog House Evanston, LLC, an Illinois limited liability company (the "Restaurant Tenant"), in form and substance satisfactory to and approved by Lender demising the commercial space on the ground floor of the Property (the "Restaurant Lease");

(ii) A fully-executed copy of a construction disbursing escrow agreement with the Title Company (the "Hard Cost Escrow Agreement") for a construction disbursing escrow (the "Hard Cost Escrow"), through which the Loan Increase will be disbursed to Borrower; and

(iii) Evidence satisfactory to Lender that Borrower has sufficient funds to pay for soft costs in connection with Tenant Improvement Costs.

(b) Concurrently with the execution of this Agreement, Borrower shall cause the Restaurant Tenant to fund \$239,856.26 into the Hard Cost Escrow and Lender agrees

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to disburse the Loan Increase into the Hard Cost Escrow. Such funds in the Hard Cost Escrow shall be held and disbursed in accordance with the Hard Cost Escrow Agreement and the disbursement requirements set forth in Section 4 of the Loan Agreement, except that Lender shall not be obligated to authorize disbursement of such funds unless Borrower delivers to Lender the following within fourteen (14) days after the date hereof: (i) a final as-built Survey, and (ii) a commitment from the Title Company to issue an ALTA Zoning Endorsement Form 3.1 amended to including parking (and excluding the marketability clause) (the "Zoning Endorsement") to the Title Policy.

5. **Zoning Endorsement Condition to Final Disbursement**. Lender hereby waives the Zoning Endorsement to the Title Policy required to be delivered pursuant to Section 4.16(e)(i) of the Loan Agreement, provided, however, that Borrower agrees to deliver the Zoning Endorsement to Lender within fourteen (14) days after the date hereof, the failure of which shall constitute an Event of Default under the Loan Documents.

6. **Title Policy**. On or prior to the date hereof, and as a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company (the "Title Company") to issue a date-down endorsement to Lender's title insurance Policy No. 1401 - 005984386 - D2 (the "Title Policy"), which (a) extends the effective date of the Title Policy, including all endorsements included therein to the date of recording of this Agreement, (b) increases the insured amount of the Title Policy to \$8,600,000.00, (c) includes no additional exceptions to title other than those that have been approved in writing by Lender or are otherwise permitted under the Loan Documents, (d) states that all real estate taxes and assessments applicable to the Property which are due and payable as of the date of such endorsement have been paid in full, and (e) reflects the recording of this Agreement and insures the first priority of the lien of the Security Instrument, 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 in writing or are otherwise permitted under the Loan Documents.

7. **Reaffirmation of Guaranty**. Each 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 each Guarantor in the Guaranty are, as of the date hereof, true and correct in all material respects and Guarantors do not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of each Guarantor, enforceable in accordance with its terms and Guarantors have no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

8. **Fees and Expenses**. Simultaneously with the execution and delivery of this Agreement by Borrower and Guarantors, and as a condition precedent to the agreements contained herein, Borrower shall pay to Lender a fee in the amount of \$1,500.00 plus all 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.

9. **Representations and Warranties**. The Borrower represents and warrants to Lender that, as of the date hereof:

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(a) No Event of Default, or event that with the passing of time or giving of notice would constitute an Event of Default, has occurred under any of the Loan Documents.

(b) There has been no material adverse change in the financial condition or results from operations of Borrower or any other person whose financial statement has been delivered to Lender in connection with the Loan from the most recent financial statement received by Lender, and there has been no casualty, loss or material deterioration in the condition or value of any collateral security for the Loan.

(c) Each of the representations and warranties in the Loan Documents made or deemed to be made prior to the date hereof is true and accurate as if made on the date hereof.

(d) Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(e) The Loan Documents as modified herein are the legal, valid, and binding obligation of Borrower, enforceable against Borrower in accordance with their terms.

(f) Borrower is validly existing under the laws of the State of its 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.

10. **Borrower Covenants.** Borrower covenants and agrees with Lender that Borrower fully, finally, and forever releases and discharges Lender and its successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits, of whatever kind or nature, in law or equity of Borrower, whether now known or unknown to Borrower, (i) in respect of the Loan, the Loan Documents, or the actions or omissions of Lender in respect of the Loan or the Loan Documents, and (ii) arising from events occurring prior to or contemporaneously with the execution hereof.

11. **Binding Effect.** The Loan Documents as modified herein shall be binding upon and shall inure to the benefit of Borrower, Guarantors, and Lender and their respective successors and assigns.

12. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to conflicts of law principles.

13. **Counterpart Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

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14. **Limited Modification.** Except to the limited extent expressly provided herein, the Loan Documents shall remain unmodified. Except as expressly set forth in this Agreement, this Agreement shall not release or affect the liability of any party or parties who may now or hereafter be liable under or on account of any of the Loan Documents. Whenever possible, this Agreement shall be read to harmonize, rather than conflict, with any term or provision contained in the Loan Documents which is not specifically modified by this Agreement. This Agreement constitutes a modification and not a novation.

15. **Miscellaneous.**

(a) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantors merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantors and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantors 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 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.

(b) 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 Guarantors, nor shall privity of contract be presumed to have been established with any third party.

(c) Any references to the "Loan Documents", or to any specific Loan Document, contained in any of the Loan Documents shall be deemed to refer to the Loan Documents, or to such specific Loan Document, 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.


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

LENDER:

TCF NATIONAL BANK, a national banking association

By: 
Name: Craig Przygoda
Title: Relationship Manager

BORROWER:

828 NOYES STREET LOFTS LLC, an Illinois limited liability company

By: 828 Noyes Partners LLC, an Illinois limited liability company, its manager

By: GDS Noyes Partners LLC, an Illinois limited liability company, its manager

By: GDS Development LLC, an Illinois limited liability company, its manager

By: _____
Name: Gregory J. DeStefano
Title: Sole Member

GUARANTORS:

Name: **GREGORY J. DESTEFANO**, personally

Name: **RICHARD E. SPINELL**, personally

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

LENDER:

TCF NATIONAL BANK, a national banking association

By: _____
Name: Craig Przygoda
Title: Relationship Manager

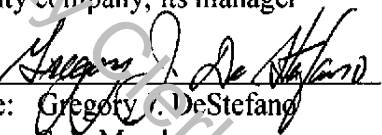
BORROWER:

828 NOYES STREET LOFTS LLC, an Illinois limited liability company


By: 828 Noyes Partners LLC, an Illinois limited liability company, its manager

By: GDS Noyes Partners LLC, an Illinois limited liability company, its manager

By: GDS Development LLC, an Illinois limited liability company, its manager

By: 
Name: Gregory J. DeStefano
Title: Sole Member

GUARANTORS:


Name: GREGORY J. DESTEFANO, personally

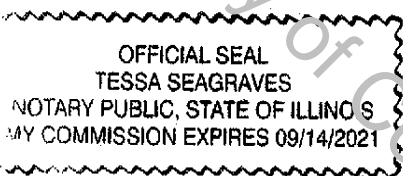

Name: RICHARD E. SPINELL, personally

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STATE OF ILLINOIS)
).ss
COUNTY OF COOK)

I Tessa Seagraves, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Craig Przygoda, Relationship Manager of TCF NATIONAL BANK, a national banking association, and its successors and assigns, 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 11 day of November, 2018.



[Handwritten Signature]
Notary Public

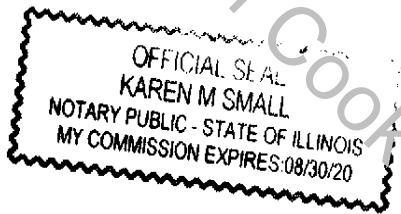
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STATE OF ILLINOIS)
).ss
COUNTY OF Cook)

I Karen M Small a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gregory J. Destefano, the Sole Member of GDS Development LLC, an Illinois limited liability company, the manager of GDS Noyes Partners LLC, an Illinois liability company, the manager of 828 Noyes Partners LLC, an Illinois limited liability company, the manager of **828 NOYES STREET LOFTS 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 for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 6th day of December, 2018.

Karen M Small
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION OF LAND

LOT 2 IN NORTHWESTERN UNIVERSITY'S RESUBDIVISION OF PART OF LOT 9 OF ASSESSOR'S DIVISION OF FRACTIONAL SECTION 7, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 11-07-120-051-0000

ADDRESS: 828 Noyes Street
Evanston, IL, 60201

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