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Latimer LeVay Fyock LLC
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Attn: Janet Wagner, Esq.
LLF File No.: 20554-02



Doc# 1905934053 Fee \$62.00

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EDWARD M. HOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 02/28/2019 02:19 PM PG: 1 OF 13

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MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is dated as of February 21, 2019, by and among 36 HOLDINGS LLC, a Delaware limited liability company ("Borrower"), STEVEN L. DEGRAFF, HAROLD S. DEMBO, and MARK FISHMAN, each in their individual capacities, and jointly and severally (each a "Guarantor", and collectively, the "Guarantors") and PAN AMERICAN BANK & TRUST, an Illinois banking corporation, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Three Million Two Hundred Thousand and no/100 Dollars (\$3,200,000.00) pursuant to the terms and conditions of that Loan Agreement dated as of April 30, 2015 between Borrower and Lender, (the "Initial Loan Agreement"), and as evidenced by a Promissory Note dated April 30, 2015 in the principal amount of the Loan made payable by Borrower to the order of Lender ("Initial Note").

B. The Note is secured by, among other things, (i) that certain Note Pledge Agreement (the "Note Pledge Agreement") dated as of April 30, 2015 executed by Borrower in favor of Lender, (ii) that certain Guaranty (the "Guaranty") dated as of April 30, 2015 executed by each Guarantor on a joint and several basis to and for the benefit of Lender; (iii) that certain Collateral Assignment of Membership Interests ("Assignment of Membership Interests") dated as of April 30, 2015 executed by each of the Guarantors and Eric Hoberman, an individual to and in favor of Lender; and (iv) certain other loan documents (the Note, the Note Pledge Agreement, the Guaranty, the Assignment of Membership Interests, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

Box 400



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C. On or about May 1, 2017, Borrower and Lender entered into that Change in Terms Agreement (the "Change in Terms I") pursuant to which, among other things, the Maturity Date of the Loan was extended to August 1, 2017.

D. On or about August 1, 2017, Borrower and Lender entered into that Change in Terms Agreement (the "Change in Terms II") pursuant to which, among other things, the Maturity Date of the Loan was extended to November 1, 2017.

E. On or about November 1, 2017, Borrower and Lender entered into that Change in Terms Agreement (the "Change in Terms III") pursuant to which, among other things, the Maturity Date of the Loan was extended to February 1, 2018.

F. On or about February 1, 2018, Borrower, Guarantors, and Lender entered into that Modification of Loan Documents (the "Third Modification") pursuant to which, among other things the Maturity Date of the Loan was extended to May 1, 2018.

G. On or about May 1, 2018, Borrower, Guarantors, and Lender entered into that Modification of Loan Documents (the "Fourth Modification") pursuant to which, among other things, the Maturity Date of the Loan was extended to July 1, 2018.

H. On or about September 27, 2018 (and effective as of July 1, 2018), Borrower, Guarantors, and Lender entered into that Modification (the "Fifth Modification") pursuant to which, among other things, the Maturity Date of the Loan was extended to July 1, 2019.

I. The Initial Loan Agreement together with the Change in Terms I, Change in Terms II, Change in Terms III, the Third Modification, the Fourth Modification, and the Fifth Modification is referred to herein as the "Loan Agreement". The Initial Note together with the Amended Note (defined in Section 2(b) below) are referred to as the "Note".

J. Borrower desires to amend the Loan Documents in order to, among other things, (i) increase the Loan amount to \$3,600,000.00; (ii) modify the Note Rate; and (iii) extend the Maturity Date of the Loan to February 1, 2020.

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 of the Note is hereby extended to February 1, 2020. Any reference in the Note, the Loan Agreement or any other Loan Document to the Maturity Date shall mean February 1, 2020.

2. **Principal and Interest.**

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(a) The principal amount of the Loan is hereby increased by \$400,000.00 to the increased principal amount of \$3,600,000.00. Any reference in the Loan Documents to the Loan or the Loan Amount or a variation thereof intended to reference the principal amount of the Loan shall hereafter mean \$3,600,000.00.

(b) In connection with and to evidence the increased principal amount of the Loan, Borrower shall execute and deliver to Lender that Amended and Restated Promissory Note (the "Amended Note") of even date herewith made by Borrower payable to Lender in the increased principal amount of \$3,600,000.00.

(c) The term "Note Rate" is defined in the Amended Note as the daily floating rate equal to the Prime Rate (as defined in the Amended Note) plus one percent (1.00%), provided, however, that regardless of fluctuations in the Prime Rate, the Note Rate shall at no time be less than six percent (6.0%), all as set forth more fully in the Amended Note.

(d) Payments of principal and interest shall be due and payable as set forth in the Note.

3. **Des Plaines Property.** Borrower previously granted to Lender a security interest in and first lien upon the real property commonly known as 36 W. Randolph Street, Chicago, Illinois 60601 (the "Randolph Property") and legally described therein and the real property commonly known as 1244-1256 Rand Road, Des Plaines, Illinois 60016 (the "Des Plaines Property") pursuant to that Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing (the "Mortgage") dated September 27, 2018 recorded with the Cook County, Illinois Recorder of Deeds on October 11, 2018 as Document No. 1828404032. Upon the sale of the Des Plaines Property and from the proceeds of such sale, Borrower may make a prepayment of the Loan in an amount up to \$720,000.00 which shall not be subject to the Exit Fee, defined in and set forth in the Note.

4. **Real Estate Taxes.**

(a) The principal increase shall be used to pay the real estate taxes currently due and payable on the Randolph Property and the Des Plaines Property. Any amount of the principal increase not used for said real estate taxes shall be deposited to the real estate tax escrow.

(b) Commencing on March 1, 2019 and on the first day of each month thereafter together with the payments due as set forth in the Amended Note, Borrower shall pay to Lender an amount to be determined by Lender based on the real estate tax bills for the Randolph Property and the Des Plaines Property to be deposited to a real estate tax escrow account and to be disbursed as set forth in Sections 4 and 5 of the Mortgage.

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

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

(b) There is currently no Event of Default (as defined in the Loan Agreement) under the Loan Agreement, the Note, the Note Pledge Agreement, 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 Loan Agreement, the Note, the Note Pledge Agreement, 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, any 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.

6. **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 and no Guarantor knows of any default thereunder. The Guaranty continues to be the valid and binding obligation of each Guarantor, enforceable in accordance with its terms and no Guarantor has any claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty. In addition, each 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 any Guarantor under the Illinois Surety Act.

7. **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.

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8. 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 any Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, each Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, each 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 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 any Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, each 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, each 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 "Loan Agreement", "Note", the "Note Pledge Agreement" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Loan Agreement, the Note, the Note Pledge Agreement, 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.

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(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.

[Signature Page Follows]

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RECORDER OF DEEDS

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

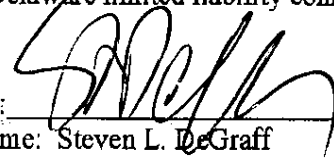
LENDER:

Pan American Bank & Trust,
an Illinois banking corporation


By: _____
Name: Robert Bill
Title: Vice President

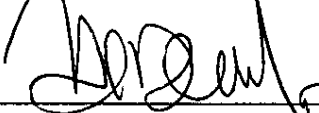
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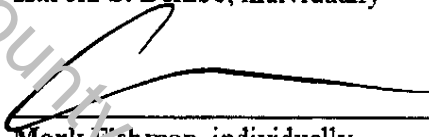
36 Holdings LLC,
a Delaware limited liability company

By:  _____
Name: Steven L. DeGraff
Title: Manager

GUARANTORS:

 _____
Steven L. DeGraff, individually

 _____
Harold S. Dembo, individually

 _____
Mark Fishman, individually

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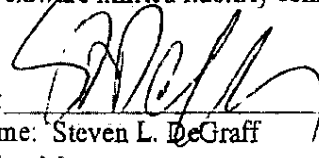
LENDER:

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By: 
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Title: Vice President

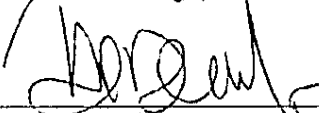
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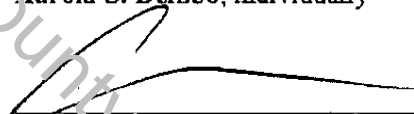
36 Holdings LLC,
a Delaware limited liability company

By: 
Name: Steven L. DeGraff
Title: Manager

GUARANTORS:


Steven L. DeGraff, individually


Harold S. Dembo, individually


Mark Fishman, individually

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EXHIBIT A-1

LEGAL DESCRIPTION

Lots 5 to 8, both inclusive, in the Assessor's Division of Lot 5, 6 and 8, and all that part of original Lot 5 in Block 36, lying South of a line, running East and West, and 110 feet south of and parallel with South line of the first alley to the North, and lying West of a line, 60.24 feet, East of and parallel with the East line of Dearborn Street, and North of the North Line of Lots 5 and 8, in Assessor's Division of Lots 5, 6 and 8 in Block 36 in Original Town of Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PIN(s): 17-09-439-016-0000

Commonly known as: 36 W. Randolph Street, Chicago, Illinois 60601

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EXHIBIT A-2

LEGAL DESCRIPTION

THAT PART OF LOT 1 OF STEEGE'S SUBDIVISION OF PART OF THE SOUTH EAST ¼ OF SECTION 8, AND THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS RECORDED SEPTEMBER 19, 1881, IN BOOK 16 OF PLATS, PAGE 1, AS DOCUMENT 348716 IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE EAST LINE OF THE WEST 100 FEET OF SAID LOT 1 AND THE SOUTHERLY RIGHT OF WAY LINE OF COMMONWEALTH EDISON COMPANY, SAID INTERSECTION BEING A DISTANCE OF 392.89 FEET SOUTH OF THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION 17; THENCE NORTHEASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF A DISTANCE OF 541.65 FEET TO AN ANGLE POINT IN THE SOUTHERLY RIGHT OF WAY LINE FOR A POINT OF BEGINNING, SAID ANGLE POINT BEING 622.72 FEET EAST, AND 271 FEET SOUTH OF THE NORTHWEST CORNER OF THE NORTHEAST ¼ OF SAID SECTION 17, THENCE SOUTHWESTERLY A DISTANCE OF 456.41 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID LOT 1, WHICH IS A DISTANCE OF 73.34 FEET NORTHWESTERLY OF THE SOUTHEAST CORNER OF SAID LOT 1; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LOT 1 A DISTANCE OF 230.8 FEET TO A POINT WHICH IS A DISTANCE OF 99.76 FEET SOUTHEASTERLY OF THE INTERSECTION OF SAID LINE WITH THE EAST LINE OF THE WEST 100 FEET OF SAID LOT 1; THENCE NORTHEASTERLY ALONG A LINE DRAWN FROM SAID POINT TO A POINT IN THE SOUTHERLY RIGHT OF WAY LINE OF SAID COMMONWEALTH EDISON COMPANY WHICH IS A DISTANCE OF 193.55 FEET NORTHEASTERLY OF THE EAST LINE OF THE WEST 100 FEET OF LOT ONE, A DISTANCE OF 187.80 FEET; THENCE NORTHEASTERLY ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID COMMONWEALTH EDISON COMPANY, A DISTANCE OF 348.1 FEET TO THE POINT OF BEGINNING.

PIN(s): 09-17-200-111-0000

Commonly known as: 1244-1256 Rand Road, Des Plaines, Illinois