

# UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Aronberg Goldgehn Davis & Garmisa  
330 North Wabash Avenue, Suite 1700  
Chicago, Illinois 60611  
Attention: Sharon S. Zaban



Doc# 1918417081 Fee \$88.00

RHSP FEE:\$9.00 APRF FEE: \$1.00

EDWARD H. HOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 07/03/2019 11:14 AM PG: 1 OF 10

## SECOND MODIFICATION OF LOAN DOCUMENTS

THIS SECOND MODIFICATION OF LOAN DOCUMENTS (this "Modification") is dated as of June 11, 2019 (the "Effective Date"), and is entered into by **2550 WABASH LLC**, an Illinois limited liability company ("Borrower") and **FIRST MIDWEST BANK** ("Lender").

### WITNESSETH:

**WHEREAS**, pursuant to that certain Construction Loan Agreement between Borrower and Lender dated as of August 29, 2016 (the "Loan Agreement"), Lender made available to Borrower a construction loan in the maximum principal amount of \$8,575,000.00 (the "Loan"). The Loan is evidenced by that certain Promissory Note dated as of August 29, 2016, in the stated principal amount of Eight Million Five Hundred Seventy-Five Thousand and 00/100 Dollars (\$8,575,000.00) (the "Note").

**WHEREAS**, the Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of August 29, 2016, executed by Borrower in favor of Lender encumbering the property commonly known as 2550, South Wabash Avenue, Chicago, Illinois, and legally described on Exhibit A attached hereto (the "Property"), which was recorded on August 31, 2016 with the Cook County Recorder of Deeds (the "Recorder") as Document No. 16244416042 (the "Mortgage"), (ii) that certain Assignment of Leases and Rents dated as of August 29, 2016, executed by Borrower in favor of Lender encumbering the Property and recorded on August 31, 2016 with the Recorder as Document No. 1624416043 (the "AOR"), (iii) that certain Environmental Indemnity Agreement dated as of August 29, 2016, executed by Borrower and Guarantor (as hereinafter defined) in favor of Lender (the "Environmental Indemnity"), (iv) that certain Guaranty of Payment dated as of August 29, 2016, executed by Stuart E. Miller (the "Guarantor") in favor of Lender (the "Payment Guaranty"), (v) that certain Guaranty of Completion dated as of August 29, 2016, executed by Guarantor in favor of Lender (the "Completion Guaranty", which together with the Loan Agreement, the Note, the Mortgage, the AOR, the Environmental Indemnity, the Payment

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Loan Agreement, the Note, the Mortgage, the AOR, the Environmental Indemnity, the Payment Guaranty, and any other documents, certificates and agreements entered into and/or delivered to Lender by or for the benefit of Borrower in connection with the Loan, in their original form and as amended, replaced or restated from time to time, including by way of the First Modification (as hereinafter defined) are collectively referred to herein as the “Loan Documents”).

**WHEREAS**, each of the foregoing Loan Documents was modified by that certain First Modification of Loan Documents dated as of August 29, 2018, and recorded with the Recorder on August 31, 2018, as Document No. 1824316033 (the “First Modification”), which, among other things, (i) extended the Construction Completion Date (as defined in the Loan Agreement) to May 31, 2019, (ii) extended the Maturity Date (as defined in the Loan Agreement) of the Note to August 29, 2019, and (iii) extended the Extended Maturity Date (as defined in the Loan Agreement) to no later than August 29, 2024.

**WHEREAS** Borrower has requested that Lender, among other things, (i) further extend the Construction Completion Date to September 29, 2019, (ii) further extend the Maturity Date of the Note to November 29, 2019, and (iii) further extend the Extended Maturity Date to be no later than November 29, 2024 and Lender has agreed to such requests of Borrower, upon and subject to the terms, provisions, covenants and conditions hereinafter set forth, and provided that Guarantor executes and delivers the Reaffirmation of Guaranties attached hereto and made a part hereof.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, the covenants and agreements contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

1. Recitals; Capitalized Terms. The foregoing Recitals are hereby incorporated herein as if fully set forth below. Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Loan Documents.

2. Amendments to Loan Agreement. From and after the Effective Date, the Loan Agreement is hereby amended and modified as follows:

(a) The definition of “Construction Completion Date” in Section 2.11 is hereby replaced in its entirety with the following:

“2.11. “Construction Completion Date” shall mean on or before September 29, 2019.”

(b) The definition of “Extended Maturity Date” in Section 2.22 of the Loan Agreement is hereby replaced in its entirety with the following:

“2.20. “Extended Maturity Date” shall mean the date that is five (5) years after the Conversion Date, which shall be no later than November 29, 2024.”

(c) The definition of “Maturity Date” in Section 2.39 of the Loan Agreement is hereby replaced in its entirety with the following:

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“2.39. “Maturity Date” shall mean November 29, 2019.”

3. Amendments to Note. From and after the Effective Date, the Note is hereby amended and modified as follows:

(a) Section 2(a) is amended by (i) changing the Maturity Date to November 29, 2019, and (ii) changing the Extended Maturity Date to be a date which is five (5) years after the Conversion Date, which date shall be no later than November 29, 2024. All references in any of the Loan Documents to the Maturity Date of the Note shall be amended to mean November 29, 2019. All references in any of the Loan Documents to the Extended Maturity Date shall mean be a date which is five (5) years after the Conversion Date, which date shall be no later than November 29, 2024.

(b) Section 2(e) of the Note is hereby amended by deleting the phrase “first day of August, 2024,” and replacing it with the phrase “first day of November, 2024,”.

(c) Section 4 of the Note is hereby deleted in its entirety and replaced with the following:

“Prior to the Maturity Date, Borrower may prepay all or any part of the indebtedness evidenced hereby at any time provided Borrower notifies Lender no less than forty-five (45) days prior to the date of prepayment, upon payment of an exit fee equal to 0.5% of the outstanding principal balance of the Note at the time of prepayment. Notwithstanding the foregoing, no such exit fee shall be due or payable if Borrower prepays all of the Indebtedness between May 29, 2019 and the Maturity Date.

From and after the Conversion Date and prior to the Extended Maturity Date, Borrower may prepay all or any part of the indebtedness evidenced hereby at any time provided Borrower notifies Lender no less than thirty (30) days prior to the date of prepayment, upon payment of the following exit fee:

Period:	Exit Fee:
November 30, 2019 to November 29, 2020	3% of outstanding principal balance of the Note at the time of prepayment
November 30, 2020 to November 29, 2023	2% of outstanding principal balance of the Note at the time of prepayment
November 30, 2023 to May 28, 2024	1% of outstanding principal balance of the Note at the time of prepayment

No exit fee shall be due for any prepayment from and after May 29, 2024. Any prepayment of less than the full amount owing under this Note shall be applied to the installments due hereunder in the inverse order of their respective maturities.”

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4. Amendments to other Loan Documents. All references in any Loan Document to the Maturity Date of the Note shall mean November 29, 2019, or such earlier date on which the entire principal amounts evidenced by the Note, and all other amounts owing thereunder, shall be required to be paid in full. All references in any Loan Document to the Extended Maturity Date of the Note shall mean the date that is five (5) years after the Conversion Date, which shall be no later than November 29, 2024.

5. Interest Reserve. As a condition precedent to the agreements contained in this Modification, on or before the Effective Date, Borrower hereby agrees to deposit \$300,000.00 into the Interest Reserve (as defined in the Loan Agreement) for disbursement in accordance with the terms of the Loan Agreement.

6. Continuing Validity. Except as expressly modified above, the terms of the Mortgage and the other Loan Documents shall remain unchanged and in full force and effect and are legally valid, binding, and enforceable in accordance with their respective terms. Consent by Lender to this Modification does not waive Lender's rights to require strict performance of the Mortgage nor obligate Lender to make any future modifications. Nothing in this Modification shall constitute a satisfaction of the promissory notes or other credit agreement secured by the Mortgage. It is the intention of Lender to retain as liable all parties to the Mortgage and all parties, makers and endorsers to the Note, including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall not be released by virtue of this Modification.

7. Representations and Warranties. Borrower hereby represents, covenants and warrants to Lender as follows:

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

(b) As if the Effective Date, there is no Event of Default under the Loan Agreement, the Note, or any other Loan Document, except those defaults acknowledged and waived by Lender herein, and Borrower has no knowledge of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under any such documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Modification, continue to be the legal, valid and binding obligation of Borrower, enforceable in accordance with their respective terms.

(d) There has been no material adverse change in the financial condition of Borrower from the date of the most recent financial statements received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses or setoffs with respect to the Loan or the Loan Documents as modified herein, including, without limitation, Lender's purported breach of its implied duty of good faith and fair dealing.

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(f) Borrower is validly existing and in good standing under the laws of the State of Illinois and has the requisite power and authority to execute and deliver this Modification and to perform the Loan Documents as modified herein. 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. This Modification has been duly executed and delivered on behalf of Borrower.

8. Expenses. Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Modification, including, without limitation, recording fees and attorneys' fees and expenses.

9. Release. In consideration of Lender entering into this Modification, Borrower hereby releases and forever discharges Lender, its officers, directors, employees, agents and attorneys from any and all claims, debts, obligations, demands, costs, expenses, actions and causes of action, of every nature and description, whether sounding in contract, tort or otherwise, known and/or unknown, whether or not related to the subject matter of this Modification, the Note and the other Loan Documents, which Borrower now has or at any time may hold, by reason of any matter, cause or thing occurred, done, omitted or suffered to be done prior to the date of this Modification, including, without limitation, any claims relating to Lender's purported breach of its implied duty of good faith and fair dealing. Borrower further agrees that the release provided for herein shall in all respects continue to be effective and not subject to termination or rescission because of any new information obtained by Borrower after the effective date of this Modification. This release is fully effective as of the effective date hereof. Lender is not releasing Borrower from any claims, debts, obligations, demands, costs, expenses, actions or causes of action.

10. Miscellaneous.

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

(b) This Modification shall not be construed more strictly against Lender than against Borrower merely because it was prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Modification, and Borrower and Lender each acknowledge and waive 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 signatories hereto 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.

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(c) The execution by Lender of this Modification shall not cause Lender to be deemed to be a venturer or partner of or in any way associated with Borrower nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower 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 and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Modification. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Modification shall bind and inure to the benefit of the parties hereto and their respective 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 such document 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 Modification may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Modification. Receipt of an executed signature page to this Modification by facsimile or other electronic transmission shall constitute effective delivery thereof. Electronic records of executed Loan Documents maintained by the Lender shall be deemed to be originals.

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

**[signature page to follow]**



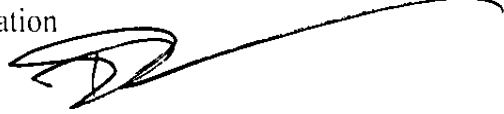


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**LENDER:**

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

By: \_\_\_\_\_



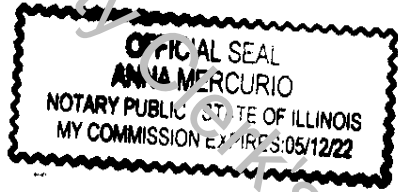
Anthony Basilios, Senior Vice President

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF Cook        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Anthony Basilios, as Senior Vice President of **FIRST MIDWEST BANK**, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as his own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes herein set forth.

GIVEN under my hand and notarial seal this 11<sup>th</sup> day of June 2019.

  
Notary Public





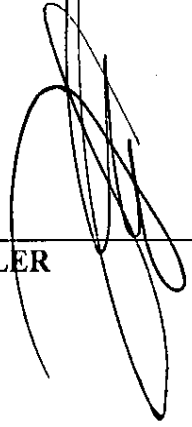
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## REAFFIRMATION OF GUARANTIES

Stuart E. Miller (the "Guarantor"), as the Guarantor under that certain Guaranty of Payment (the "Payment Guaranty") in favor of Lender dated as of August 29, 2016, and that certain Guaranty of Completion (the "Completion Guaranty", and together with the Payment Guaranty, the "Guaranties", and each a "Guaranty") in favor of Lender dated as of August 29, 2016, hereby consent to the modifications provided in the foregoing Modification and hereby expressly ratifies and reaffirms all of his liabilities and obligations as a Guarantor under the Guaranties, and agrees to comply fully with all of the terms, conditions, provisions, agreements, representations, undertakings, warranties, guaranties, indemnities, grants and security interests and covenants contained in the Guaranties, notwithstanding that such obligations may be modified, amended, or increased by the foregoing Modification. Guarantor acknowledges that he has no defenses, claims or set-offs to the enforcement of the Guaranties as amended by the foregoing Modification.

GUARANTOR:

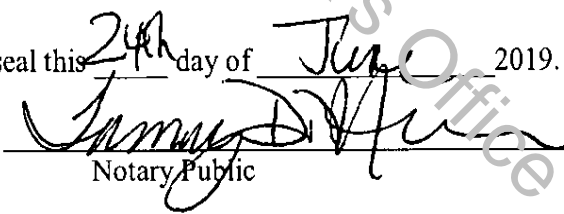
\_\_\_\_\_  
STUART E. MILLER

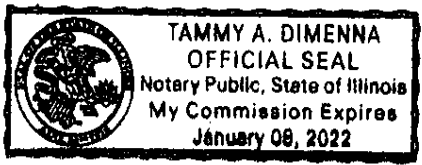


STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **STUART E. MILLER**, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as his own free and voluntary act, for the uses and purposes herein set forth.

GIVEN under my hand and notarial seal this 24th day of June, 2019.

  
\_\_\_\_\_  
Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 6, 7, 8 AND 9 IN ASSESSOR'S DIVISION OF BLOCK 73 OF THE CANAL TRUSTEES' SUBDIVISION OF THE WEST 1/2 OF SECTION 27, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 2550 South Wabash Avenue, Chicago, Illinois 60616

P.I.N.: 17-27-122-021-0000

**COOK COUNTY  
RECORDER OF DEEDS**

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RECORDER OF DEEDS**