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CS# 18000034336

THIS DOCUMENT WAS PREPARED BY,
AND AFTER RECORDING, RETURN TO:

Courtney E. Mayster
MUCH SHELIST, P.C.
191 North Wacker Drive
Suite 1800
Chicago, Illinois 60606.1615

PERMANENT TAX INDEX NUMBERS:

17-04-205-048-0000
17-04-205-059-0000
17-04-205-060-0000
17-04-205-058-0000

PROPERTY ADDRESS:

1435-1443 North Wells Street
Chicago, Illinois 60614



Doc# 2028806246 Fee \$88.00

RHSP FEE: \$9.00 RPRF FEE: \$1.00

EDWARD M. HOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 10/14/2020 02:15 PM PG: 1 OF 11

This space for Recorder's use only.

SECOND MODIFICATION OF MORTGAGE AND LOAN DOCUMENTS

THIS SECOND MODIFICATION OF MORTGAGE AND LOAN DOCUMENTS (this "**Modification**") is dated as of July 3, 2020, by and among 1435-1443 N WELLS LLC, a Delaware limited liability company (the "**Borrower**"), **DAVID DUSHEY** and **BRIAN GOLDBERG** (each, a "**Guarantor**" and collectively, "**Guarantors**") and **WINTRUST BANK, NATIONAL ASSOCIATION** (formerly known as Wintrust Bank), together with its successors and assigns ("**Lender**").

RECITALS:

A. Pursuant to that certain Construction Loan Agreement dated as of July 3, 2017 executed by and between the Borrower and the Lender (the "**Loan Agreement**"), Lender made a loan ("**Loan**") to Borrower in the original principal amount of **FOURTEEN MILLION TWO HUNDRED THOUSAND AND 00/100 DOLLARS** (\$14,200,000.00). The Loan is evidenced by a certain Promissory Note dated July 3, 2017 made by Borrower and payable to Lender in the original principal amount of **FOURTEEN MILLION TWO HUNDRED THOUSAND AND 00/100 DOLLARS** (\$14,200,000.00), as amended by that certain Note Modification Agreement dated as of July 3, 2019 by and between Borrower and Lender (collectively, the "**Note**").

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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 July 3, 2017 from Borrower to the Lender and recorded with the Cook County, Illinois Recorder (the “**Recorder’s Office**”) on July 11, 2017 as Document No. 1719229112 (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 July 3, 2017 from Borrower to the Lender and recorded with the Recorder’s Office on July 11, 2017 as Document No. 1719229113 (the “**Assignment of Rents**”); (iii) that certain Environmental Indemnity Agreement dated July 3, 2017 from Borrower and Guarantors to the Lender (the “**Indemnity Agreement**”); (iv) that certain Guaranty of Payment and Completion dated July 3, 2017 from the Guarantors to Lender (the “**Guaranty**”); that certain Modification of Mortgage and Loan Documents dated as of July 3, 2019 by and among Borrower, Guarantors and Lender and recorded with the Recorder’s Office on September 10, 2019 as Document No. 1925345010 (the “**First Modification**”); and (vi) certain other loan documents (the Loan Agreement, the Note, the Mortgage, the Assignment of Rents, the Indemnity Agreement, the Guaranty, the First Modification and the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to in this Modification as the “**Loan Documents**”).

C. Each of the Guarantors is a member, directly or indirectly, of the Borrower and, having a financial interest in the Property, has agreed to execute and deliver this Modification.

D. Borrower desires to amend the Loan Documents to extend the Maturity Date, among other things, as herein set forth.

AGREEMENTS

NOW, THEREFORE, 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 Guarantors’ 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. **Maturity Date.** The Maturity Date (as defined in the Note) shall be amended and extended to July 3, 2021. All references in the Loan Documents to the Maturity Date shall hereinafter mean **July 3, 2021**.

3. **Modification of Note.** Concurrently with the execution and delivery of this Modification, Borrower shall execute and deliver to Lender a Second Note Modification Agreement (the “**Note Modification Agreement**”), which Note Modification Agreement shall extend the Maturity Date of the Loan, among other things, as therein set forth.

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4. **Real Estate Taxes.** Borrower shall provide proof of payment of the real estate taxes for the Property to Lender within thirty (30) days of the due date for each real estate tax installment.

5. **Representations and Warranties of Borrower and Guarantors.** Borrower and each of the Guarantors 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.

(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 Guarantors 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, neither Borrower nor any 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 Guarantors. This Modification has been duly executed and delivered on behalf of Borrower and Guarantors.

6. **Consent of Guarantors and Reaffirmation of Guaranty.** Each 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 each Guarantor in the Guaranty are, as of this date, true and correct in all material respects and no Guarantor knows of any default thereunder. The Guaranty, as it may have been amended, continues to be the valid and binding obligation of Guarantors, enforceable in accordance with its terms, and as of the date hereof, no Guarantor has any claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

7. **Release by Borrower and Guarantors.** Borrower and each 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

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whatsoever, whether known or unknown, suspected or unsuspected, contingent or fixed, in law or in equity, which Borrower or any 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.

8. **Waiver of Defenses.** As of the date hereof, Borrower and each Guarantor acknowledge that neither Borrower nor any 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 each Guarantor's agreement to amend the Loan.

9. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Stewart Title Guaranty Company to issue a date down endorsement to loan policy/file no. **18000034336** (the "**Title Policy**"), as of the date this Modification is recorded, reflecting the recording of this Modification, 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. **Expenses.** As a condition precedent to the agreements contained in this Modification, Borrower shall pay the Extension Fee (as defined in the Note Modification Agreement) all out-of-pocket costs and expenses actually incurred by Lender in connection with this Modification, including, but not limited to, title charges, recording fees, appraisal fees and reasonable legal fees, if any.

11. **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 any Guarantor 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 Modification, 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 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

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with Borrower or any Guarantor, nor will privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantors 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, Guarantors 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.

(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 "Loan Agreement," "Note," the "Mortgage," the "Assignment of Rents," the "Indemnity Agreement," the "Guaranty," the "First Modification," or the "Loan Documents" contained in any of the Loan Documents should be considered to refer to the Loan Agreement, the Note, the Mortgage, the Assignment of Rents, the Indemnity Agreement, the Guaranty, the First Modification 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 Borrower's and each Guarantor's obligations under this Modification.

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

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 1:

THE NORTH ½ OF THE NORTH 49 ½ FEET OF THE WEST 100 FEET OF LOT 117 IN BRONSON'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 20 AND 21 IN STARR'S SUBDIVISION OF BLOCKS 114 TO 116 IN BRONSON'S ADDITION TO CHICAGO IN THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 19 IN STARR'S SUBDIVISION OF BLOCKS 114 TO 116 IN BRONSON'S ADDITION TO CHICAGO IN THE NORTHEAST ¼ OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS OF REAL ESTATE:

1435-1443 NORTH WELLS STREET
CHICAGO, ILLINOIS 60614

PERMANENT TAX INDEX NUMBERS:

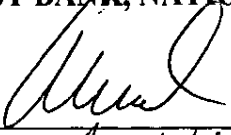
17-04-205-048-0000
17-04-205-059-0000
17-04-205-060-0000
17-04-205-058-0000

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

LENDER:

WINTRUST BANK, NATIONAL ASSOCIATION

By: 
Name: ARM Weel
Its: SUP

BORROWER:

1435-1443 N WELLS LLC
a Delaware limited liability company

By: _____
Name: David Dushey
Title: Manager

GUARANTORS:

Name: **DAVID DUSHEY**




Name: **BRIAN GOLDBERG**

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

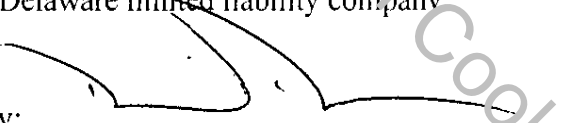
LENDER:

WINTRUST BANK NATIONAL ASSOCIATION


By: 
Name: ARON WHEEL
Its: SVP

BORROWER:

1435-1443 N WELLS LLC,
a Delaware limited liability company

By: 
Name: David Dushey
Title: Manager

GUARANTORS:


Name: **DAVID DUSHEY**

Name: **BRIAN GOLDBERG**

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **DAVID DUSHEY**, individually and personally known to me as manager of **1435-1443 N WELLS LLC**, a Delaware limited liability company, and 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, sealed and delivered the said instrument as such manager of said limited liability company, as his own and 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 _____ day of August, 2020.

[SEAL]

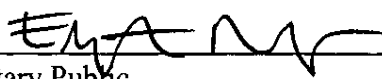
Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, do hereby certify that **BRIAN GOLDBERG**, individually, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such individual, 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 17 day of August, 2020.

[SEAL]



Notary Public



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STATE OF ~~ILLINOIS~~ NEW YORK)
) SS.
COUNTY OF ~~COOK~~ NEW YORK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **DAVID DUSHEY**, individually and personally known to me as manager of **1435-1443 N WELLS LLC**, a Delaware limited liability company, and 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, sealed and delivered the said instrument as such manager of said limited liability company, as his own and 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 24th day of August, 2020.

[SEAL] **MICHAEL I. TOUSSIE CPA/PFS**
Notary Public, State of New York
No. 01TO4742215
Qualified in New York County
Commission Expires July 3, 2021

Notary Public 

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, do hereby certify that **BRIAN GOLDBERG**, individually, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such individual, 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 _____ day of August, 2020.

[SEAL]

Notary Public

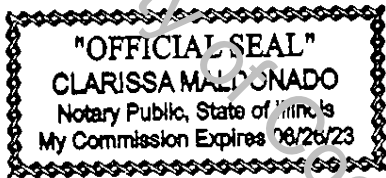
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, do hereby certify that ALAN WHEEL, a SVP of **WINTRUST BANK, NATIONAL ASSOCIATION**, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such ALL, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 31st day of August, 2020.

[SEAL]



[Signature]
Notary Public

NOTARY PAGE TO SECOND MODIFICATION OF MORTGAGE AND LOAN DOCUMENTS
1435-1443 N WELLS LLC