

UNOFFICIAL COPY

Doc#: 2109701041 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 04/07/2021 05:34 AM Pg: 1 of 11

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

FOURTH MODIFICATION OF LOAN DOCUMENTS

THIS FOURTH MODIFICATION OF LOAN DOCUMENTS (this "Fourth Modification") is dated as of December 22, 2020, but is effective as of November 29, 2020 (the "Effective Date"), and is entered into by **2550 WABASH LLC**, an Illinois limited liability company ("Borrower") and **FIRST MIDWEST BANK**, an Illinois state chartered 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), given by Borrower and payable to the order of Lender (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. 1624416042 (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

UNOFFICIAL COPY

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, the Second Modification and the Third Modification (as each is hereinafter defined) are collectively referred to herein as the "Loan Documents").

WHEREAS, each of the foregoing Loan Documents was modified by (a) 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, (b) that certain Second Modification of Loan Documents dated as of June 11, 2019, and recorded with the Recorder on July 3, 2019, as Document No. 1918417001 (the "Second Modification"), which, among other things, (i) further extended the Construction Completion Date to September 29, 2019, (ii) further extended the Maturity Date to November 29, 2019, and (iii) further extended the Extended Maturity Date to no later than November 29, 2024, and (c) that certain Third Modification of Loan Documents dated as of December 19, 2019, but effective as of November 29, 2019, and recorded with the Recorder on December 24, 2019 as Document No. 1935841046 (the "Third Modification"), which, among other things, (i) further extended the Maturity Date to November 29, 2020, (ii) increased the amount of the Loan from \$8,575,000.00 to \$11,500,000.00, (iii) further extended the Construction Completion Date from September 29, 2019 to May 31, 2020, and (iv) eliminated the conversion and extension of the Loan as provided in the Loan Documents.

WHEREAS, as of the date hereof, the Note is fully disbursed and \$11,500,000.00 of the Note is outstanding. Borrower is not allowed to re-borrow any portion of the repaid Note.

WHEREAS, Borrower has requested that Lender agree to extend the Maturity Date of the Note from November 29, 2020, to February 28, 2021, and provide for a further extension of the Maturity Date to May 28, 2021 provided certain conditions are met, and Lender has agreed to such request of Borrower, upon and subject to the terms, provisions, covenants and conditions hereinafter set forth, and provided that Guarantor executes and delivers the Modification and 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:

UNOFFICIAL COPY

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

2.39. "Maturity Date" shall mean February 28, 2021.

3. Amendments to the Loan Documents. Each of the Loan Agreement, the Mortgage, the AOR, the Environmental Indemnity, and the other Loan Documents are hereby amended in the following respects:

(a) All references to the Maturity Date of the Note in any of the Loan Documents shall mean February 28, 2021.

4. Maturity Date Extension. Provided that (i) no Event of Default has occurred and is continuing, (ii) Lender has received an updated appraisal of the Property satisfactory to Lender in its sole discretion, and (iii) Borrower pays to Lender a loan extension fee in the amount of \$1,500.00, the Maturity Date of the Note as set forth in the Note and in any of the other Loan Documents shall be automatically extended from February 28, 2021 to May 28, 2021. IN such event, all repayment terms set forth in the Note shall continue to the further extended Maturity Date.

5. 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 Fourth 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 Fourth 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 Fourth Modification.

6. 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 Fourth Modification, continue to be the legal, valid and binding obligation of Borrower, enforceable in accordance with their respective terms.

UNOFFICIAL COPY

(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.

(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 Fourth Modification and to perform the Loan Documents as modified herein. The execution and delivery of this Fourth 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 Fourth Modification has been duly executed and delivered on behalf of Borrower.

7. Lien Extension. By this Fourth Modification, all liens, security interest, assignments, superior titles, rights, remedies, powers, equities and priorities securing the Note (collectively, the "Liens"), including, but not limited to, those under the Mortgage, the AOR and the other Loan Documents, are hereby ratified and confirmed as valid, subsisting and continuing to secure the Note. Nothing in this Agreement shall in any manner diminish, impair, or extinguish any of the Liens or the Loan Documents or the debt evidenced by the Note to be construed as a novation in any respect. The Liens are not waived and are continued and extended.

8. Loan Fee and Expenses. Borrower shall pay to Lender a loan fee of \$1,500.00, together with all out-of-pocket costs and expenses incurred by Lender in connection with this Fourth Modification, including, without limitation, recording fees and attorneys' fees and expenses.

9. Release. In consideration of Lender entering into this Fourth 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 Fourth 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 Fourth 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 Fourth 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.

UNOFFICIAL COPY

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

(b) This Fourth 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 Fourth 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 Fourth Modification. Each of the parties to this Fourth Modification represents that it has been advised by its respective counsel of the legal and practical effect of this Fourth Modification, and recognizes that it is executing and delivering this Fourth 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 Fourth 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) The execution by Lender of this Fourth 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 Fourth 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 Fourth Modification. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Fourth 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 Fourth Modification may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Fourth Modification. Receipt of an executed signature page to this Fourth Modification by facsimile or other electronic

UNOFFICIAL COPY

transmission shall constitute effective delivery thereof. Electronic records of executed Loan Documents maintained by the Lender shall deemed to be originals.

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

[signature page to follow]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

LENDER:

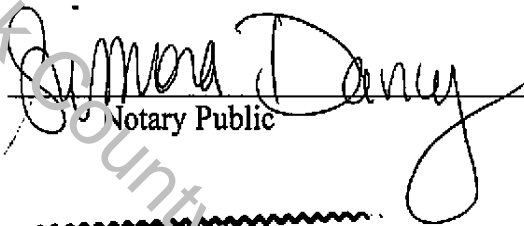
FIRST MIDWEST BANK, an Illinois state chartered bank

By: 
Anthony Basilius, 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 Basilius, as Senior Vice President of **FIRST MIDWEST BANK**, an Illinois state chartered 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 23rd day of March 2020.


Notary Public



UNOFFICIAL COPY

MODIFICATION AND 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 consents to the modifications provided in the foregoing Fourth 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 Fourth Modification. Guarantor acknowledges that the Guaranties, as amended hereby, shall continue in full force and effect and that Guarantor has no defenses, claims or set-offs to the enforcement of the Guaranties as amended by the foregoing Fourth Modification.

GUARANTOR:

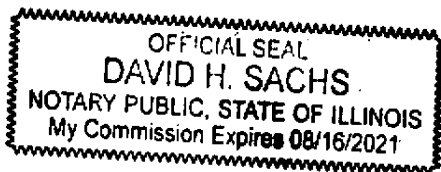
STUART E. MILLER

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 20th day of December 2020.

Notary Public



UNOFFICIAL COPY

MODIFICATION AND REAFFIRMATION OF CROSS-COLLATERALIZATION AND CROSS-DEFAULT AGREEMENT

925 CARMEN LLC, an Illinois limited liability company ("Carmen"), as a party to that certain Loan Document Modification, Cross-Collateralization and Cross-Default Agreement between Borrower, Lender and Carmen dated as of December 19, 2019 and recorded with the Recorder on December 24, 2019 as Document No. 1935841047 (the "Cross-Collateralization/Cross-Default Agreement"), hereby consents to the modifications provided in the foregoing Fourth Modification and hereby expressly ratifies and reaffirms all of the terms and conditions of the Cross-Collateralization/Cross-Default Agreement, 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 Cross-Collateralization/Cross-Default Agreement, notwithstanding that such obligations may be modified, amended, or increased by the foregoing Fourth Modification. Carmen acknowledges that the Cross-Collateralization/Cross-Default Agreement, as amended hereby, shall continue in full force and effect and that Carmen has no defenses, claims or set-offs to the enforcement of the Cross-Collateralization/Cross-Default Agreement as amended by the foregoing Fourth Modification.

CARMEN:

925 CARMEN LLC, an Illinois limited liability company

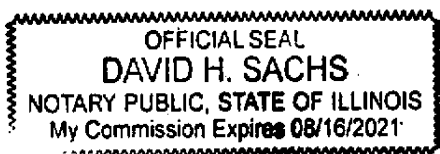
By: _____
Name: Stuart E. Miller
Title: Manager

Stuart E. Miller

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Stuart E. Miller, the Manager of 925 CARMEN 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, appeared before me this day in person and acknowledged that as such Manager, 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 20th day of December, 2020.



Notary Public

UNOFFICIAL COPY

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 ½ 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 60647

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

4823-0074-2612, v. 1

Property of Cook County Clerk's Office