

# UNOFFICIAL COPY

Doc# 2114101081 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 05/21/2021 07:12 AM Pg: 1 of 9

**THIS DOCUMENT PREPARED BY:  
AND AFTER RECORDING, MAIL TO:**  
Bennett L. Cohen, Esq.  
Cohen, Salk & Hoffman, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062

*This space reserved for Recorder's use only*

## **SECOND MODIFICATION AGREEMENT**

**THIS SECOND MODIFICATION AGREEMENT** (the "Modification Agreement") is dated as of May 14, 2021 between PULASKI PROPERTIES, LLC, an Illinois limited liability company ("Grantor") and FIFTH THIRD BANK, NATIONAL ASSOCIATION (formerly known as Fifth Third Bank, successor in interest to MB Financial Bank, N.A.) ("Lender").

### **RECITALS:**

**WHEREAS**, to secure the payment of a loan in the principal amount of \$424,268.00 (the "Original Loan"), made by the Lender to the Grantor, Grantor previously executed and delivered to Lender, among other documents, (i) that certain Mortgage, dated August 30, 2012 recorded with the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office") on September 10, 2012 as Document No. 1225442012 (the "Mortgage"), which encumbers the Grantor's commercial real property commonly known as 905-907 N. 25<sup>th</sup> Avenue, Melrose Park, Illinois 60160 and legally described in Exhibit A attached hereto (the "Property"), and (ii) that certain Assignment of Rents dated August 30, 2012 recorded in the Recorder's Office on September 10, 2012 as Document No. 1225442013 (the "Assignment of Rents") which assigned to Lender all leases and rents then or thereafter pertaining to the Property; and

**WHEREAS**, pursuant to that certain Modification of Mortgage dated September 1, 2017 between Grantor and Lender (the "First Modification"), the Mortgage was modified to secure a promissory note dated September 1, 2017 in the principal amount of \$278,559.91 made by the Lender to Grantor, evidencing a renewal of the Original Loan (the "Renewal Loan"); and

**WHEREAS**, the current unpaid principal balance of the Renewal Loan is \$221,511.62; and

**WHEREAS**, Grantor has asked the Lender to extend the maturity date of the Renewal Loan and modify the interest rate charged thereon; and

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**WHEREAS**, Grantor has also asked Lender to make the Grantor a new revolving line of credit loan in the principal amount of \$300,000.00 (the "Revolving Loan"). The Renewal Loan and the Revolving Loan shall collectively herein be called the "Loans".

**WHEREAS**, Lender has agreed to such loan requests, provided, among other conditions, that Grantor executes and delivers this Modification Agreement to the Lender.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Modification Agreement), (ii) the agreements by Lender to extend the maturity date of the Renewal Loan and modify the interest rate charged thereon, to make the Revolving Loan and modify the Mortgage and Assignment of Rents, 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. All capitalized terms used herein and not defined shall have the meaning set forth in the Mortgage, the terms of which are incorporated herein.

2. The name and address of the Lender in the Mortgage and the Assignment of Rents are hereby amended to be: "FIFTH THIRD BANK, NATIONAL ASSOCIATION (formerly known as Fifth Third Bank, successor in interest to MB Financial Bank, N.A.), 222 S. Riverside Plaza, Chicago, Illinois 60606."

3. The definition of "Note" set forth in the Mortgage and the Assignment of Rents is hereby amended and restated in its entirety as follows:

"**Note.** The word "Note" means individually and collectively, (i) that certain Promissory Note dated September 1, 2017 in the principal amount of \$278,559.91 executed by Grantor and payable to the order of Lender in monthly installments of principal plus interest calculated at the applicable floating or fixed rate therein set forth (the terms of which are incorporated herein by reference) and all extensions, renewals, amendments, refinancings, modifications (including, without limitation, a Note Modification Agreement dated May 14, 2021 between Grantor and Lender), restatements, replacements, consolidations and conversions thereof or thereto, and (ii) that certain Promissory Note dated May 14, 2021 in the principal amount of \$300,000.00 executed by Grantor and payable to the order of Lender on the maturity date therein set forth and including monthly installments of interest calculated at the applicable floating or fixed rate therein set forth (the terms of which are incorporated herein by reference) and all extensions, renewals, amendments, refinancings, modifications, restatements, replacements, consolidations and conversions thereof or thereto.

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4. THIS MODIFICATION SHALL SERVE AS PUBLIC NOTICE TO ALL CREDITORS AND OTHER PERSONS THAT THE NOTE MAY BE EXTENDED, RENEWED, AMENDED, REFINANCED, MODIFIED, RESTATED, REPLACED, CONSOLIDATED OR CONVERTED, IN WHOLE OR IN PART, FROM TIME TO TIME HEREAFTER, AND THAT IT IS THE EXPRESS INTENTION OF THE GRANTOR AND LENDER THAT THE MORTGAGE AND ASSIGNMENT OF RENTS SHALL AUTOMATICALLY SECURE PAYMENT OF ALL SUCH EXTENSIONS, RENEWALS, AMENDMENTS, REFINANCINGS, MODIFICATIONS, RESTATEMENTS, REPLACEMENTS, CONSOLIDATIONS AND CONVERSIONS OF THE NOTE, WITHOUT THE NECESSITY OF RECORDING ANY SUBSEQUENT MODIFICATION OF THE MORTGAGE OR ASSIGNMENT OF RENTS.

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

(a) The representations and warranties in the Mortgage, the Assignment of Rents and all other Related Documents are true and correct in all material respects as of the date hereof.

(b) There is currently no Event of Default and Grantor 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.

(c) The Mortgage and Assignment of Rents (as modified herein) and the Related Documents are in full force and effect and, following the execution and delivery of this Modification Agreement, they continue to be the legal, valid and binding obligations of Grantor and such other obligors or grantors thereof enforceable in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditor's rights generally or by equitable principles relating to enforceability.

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

(e) As of the date hereof, Grantor has no claims, counterclaims, defenses, or set-offs with respect to the Mortgage and the Assignment of Rents, as modified herein, or the Related Documents.

(f) Grantor is a limited liability company validly existing under the laws of the State of Illinois and has the requisite power and authority to execute and deliver this Modification Agreement and such other documents required by Lender, and to perform the Mortgage and the Assignment of Rents, as modified herein, and the other Related Documents. The execution and delivery of this Modification Agreement and the other loan documents required by Lender, and the performance of the Mortgage and the Assignment of Rents, as modified herein, have been duly authorized by all requisite action by or on

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behalf of Grantor. This Modification Agreement and such other loan documents required by Lender have been duly executed and delivered on behalf of Grantor.

6. **Fees and Expenses.** As a condition precedent to the agreements contained herein, Grantor shall pay to Lender all out-of-pocket costs and expenses incurred by Lender in connection with this Modification Agreement and the preparation of all other Related Documents being executed concurrently herewith, including, without limitation, Lender's out-of-pocket legal fees, search fees, recording fees, and appraisal fees.

7. **Waiver of Defenses.** As of the date of this Modification Agreement, Grantor hereby ratifies and confirms its obligations and liabilities under the Mortgage and the Assignment of Rents, as modified herein, and all other Related Documents executed by Grantor, and the liens and security interests created thereby, and acknowledges that it has no defenses, claims or set-offs against the enforcement by Lender of its obligations and liabilities under the Mortgage and the Assignment of Rents, as modified herein, or any of the other Related Documents executed by Grantor.

8. **No Course of Dealing.** Grantor acknowledges and agrees that this Modification Agreement is limited to the terms outlined herein, and shall not be construed as an amendment of any other terms or provisions of the Related Documents executed by Grantor not expressly set forth above. This Modification Agreement shall not establish a course of dealing or be construed as evidence of any willingness on the Lender's part to grant other or future amendments, should any be requested.

9. **No Joint Venture.** Notwithstanding the execution of this Modification Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Grantor nor shall privity of contract be presumed to have been established with any third party.

10. **Binding Agreement.** This Modification Agreement shall not be construed more strictly against Lender than against Grantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Grantor and Lender have contributed substantially and materially to the preparation of this Modification Agreement (or have had the opportunity to so contribute), and Grantor 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 Agreement. Each of the parties to this Modification Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Modification Agreement, and recognizes that it is executing and delivering this Modification 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 Modification 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.

11. **Entire Agreement.** THIS MODIFICATION AGREEMENT REPRESENTS THE ENTIRE EXPRESSION OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER

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HEREOF ON THE DATE THIS MODIFICATION AGREEMENT IS EXECUTED. THIS MODIFICATION AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

12. **Construction of Agreement.** Any references to the "Related Documents" contained in any of the Related Documents shall be deemed to refer to the Related Documents, as currently being modified. 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.

13. **Severability.** In the event any provision of this Modification Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

14. **Amendments, Changes and Modifications.** This Modification Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto. The Property described in the Mortgage shall remain in all events subject to the liens, charges or encumbrances of the Mortgage and Assignment of Rents, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to affect the liens, charges or encumbrances of the Mortgage or Assignment of Rents, or the priority thereof over any other liens, charges, or encumbrances or conveyances, or, except as expressly provided herein, to release or affect the liability of any party or parties who may now or hereafter be liable under or on account of the Note, the Mortgage, the Assignment of Rents or the other Related Documents, nor shall anything herein contained or done in pursuance thereof affect or be construed to affect any other security or instrument, if any, held by Lender as security for or evidence of the aforesaid indebtedness.

15. **Counterparts.** This Modification Agreement may be executed in any number of counterparts, and by the different parties hereto on separate counterpart signature pages, each of which shall constitute an original, and all such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Modification Agreement by telecopy, emailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Modification Agreement and such counterpart shall be deemed to be an original hereof.

16. **Time of the Essence.** Time is of the essence of Grantor's obligations under this Modification Agreement.

17. **Successors and Assigns.** This Modification Agreement shall extend to and be binding upon the Grantor and its successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

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18. **Governing Law.** This Modification Agreement shall be governed by and construed in accordance with the internal laws, and not the laws of conflicts, of the State of Illinois.

19. **Venue.** TO INDUCE LENDER TO ACCEPT THIS MODIFICATION AGREEMENT, GRANTOR IRREVOCABLY AGREES THAT, EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER, OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS MODIFICATION AGREEMENT SHALL BE LITIGATED IN COURTS WITHIN COOK COUNTY OR DUPAGE COUNTY, STATE OF ILLINOIS, AND GRANTOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SUCH COUNTY AND STATE. GRANTOR FURTHER AGREES THAT LENDER SHALL HAVE THE RIGHT TO PROCEED AGAINST THE GRANTOR OR ITS PROPERTY IN A COURT IN ANY LOCATION NECESSARY TO ENABLE THE LENDER TO OBTAIN A JUDGMENT AGAINST THE GRANTOR OR TO REALIZE ON ANY SECURITY FOR THE NOTE, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER ENTERED IN FAVOR OF THE LENDER. GRANTOR WAIVES ANY OBJECTION THAT GRANTOR MAY HAVE TO THE LOCATION OF THE COURT IN WHICH THE LENDER HAS COMMENCED A PROCEEDING DESCRIBED IN THIS PARAGRAPH.

20. **Waiver of Jury Trial.** GRANTOR AND LENDER IRREVOCABLY WAIVES, TO THE EXTENT APPLICABLE, ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS MODIFICATION AGREEMENT OR THE MORTGAGE OR ASSIGNMENT OF RENTS OR ANY AMENDMENT, INSTRUMENT, DOCUMENT, OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR WITH THE NOTE, THE MORTGAGE, THE ASSIGNMENT OF RENTS OR OTHER RELATED DOCUMENTS, AND/OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS MODIFICATION AGREEMENT OR ANY INSTRUMENT, DOCUMENT, OR AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY, TO THE EXTENT SUCH MATTER IS TRIED AT ALL.

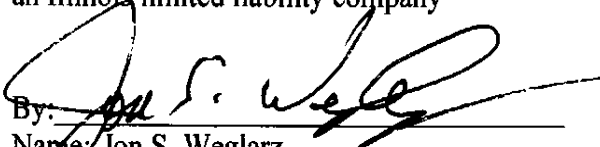
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**IN WITNESS WHEREOF**, the parties hereto have executed this Second Modification Agreement dated as of the day and year first above written.

**GRANTOR:**

PULASKI PROPERTIES, LLC,  
an Illinois limited liability company

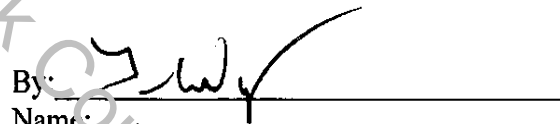
By: 

Name: Jon S. Weglarz

Title: Manager

**LENDER:**

FIFTH THIRD BANK, NATIONAL  
ASSOCIATION (formerly known as Fifth  
Third Bank, successor in interest to MB  
Financial Bank, N.A.)

By: 

Name: Tom W. Woszynski

Title: ASP

Property of Cook County Clerk's Office

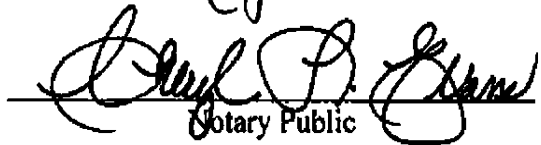
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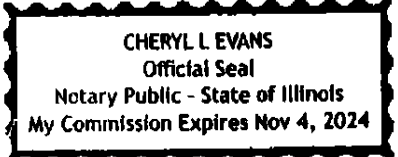
## ACKNOWLEDGMENTS OF SIGNATURES

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO CERTIFY that Jon S. Weglarz, the Manager of PULASKI PROPERTIES, LLC, an Illinois limited liability company, 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 the said instrument as his own free and voluntary act and as the free and voluntary act of such limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 17<sup>th</sup> day of May, 2021.

  
Notary Public

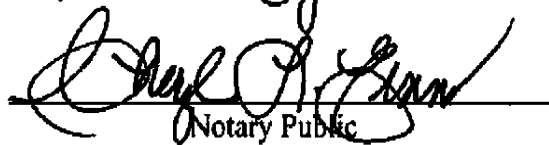


My Commission Expires: 11/4/24  
(Affix Notary Seal)

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 Tim Woloszyw, a DVP of Fifth Third Bank, National Association, is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that he or she signed and delivered said instrument as his or 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 17<sup>th</sup> day of May, 2021.

  
Notary Public



My Commission Expires: 11/4/24



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## EXHIBIT A

### Legal Description

LOTS 1, 2 AND 3, TAKEN AS A TRACT (EXCEPT THE EAST 95 FEET THEREOF), TOGETHER WITH ALL OF LOTS 4, 5, 6, 7 AND 8 IN BLOCK 152 IN MELROSE IN SECTIONS 3 AND 10, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

The Real Property or its address is commonly known as 905-907 N. 25<sup>th</sup> Avenue, Melrose Park, Illinois 60160.

The Real Property tax identification numbers are 15-03-340-004-0000; 15-03-340-018-0000; 15-03-340-019-0000; 15-03-340-020-0000 and 15-03-340-022-0000.

Property of Cook County Clerk's Office