

# UNOFFICIAL COPY

Doc#: 2200307289 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 01/03/2022 11:46 AM Pg: 1 of 12

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

Michael D. Burstein  
**MUCH SHELIST**  
191 North Wacker Drive  
Suite 1800  
Chicago, Illinois 60606.1615

**PERMANENT TAX INDEX NUMBERS:**

14-17-207-015-0000  
14-17-207-017-0000

**PROPERTY ADDRESS:**

1140 West Wilson Avenue  
Chicago, Illinois 60640

*This space for Clerk's use only*

## SECOND AMENDMENT TO LOAN DOCUMENTS

This **SECOND AMENDMENT TO LOAN DOCUMENTS** (this "**Agreement**") is made as of December 22, 2021, by and among by and among **1140 W. WILSON FLATS LLC**, an Illinois limited liability company ("**Borrower**"), (ii) **ALEX SAMOYLOVICH, WILLIAM MURPHY** and **MARK HEFFRON** (each, a "**Guarantor**", and collectively, the "**Guarantors**"), and (iii) **CIBC BANK USA**, an Illinois banking corporation (formerly known as The PrivateBank and Trust Company) ("**Lender**").

### RECITALS:

**A.** Lender previously made a loan (the "**Loan**") to Borrower in the maximum principal amount of **FOUR MILLION EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS** (\$4,800,000.00), which Loan is evidenced by a Promissory Note dated March 3, 2017 (the "**Effective Date**"), in the original principal amount of the Loan made payable by Borrower to the order of Lender (the "**Note**").

**B.** The Note is secured by, among other things, (i) that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of the Effective Date, executed by Borrower to and for the benefit of Lender and recorded with the County Clerk of

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Cook County, Illinois (the "**Clerk's Office**") on March 3, 2017, as Document No. 1706617012 (the "**Mortgage**"), which Mortgage encumbers the real property and all improvements thereon legally described on **Exhibit "A"** hereto (the "**Property**"); (ii) that certain Assignment of Rents and Leases dated as of the Effective Date from Borrower to Lender and recorded in the Clerk's Office on March 3, 2017, as Document No. 1706617013 (the "**Assignment of Rents**"); (iii) that certain Environmental Indemnity Agreement dated the Effective Date from Borrower and the Guarantors to Lender (the "**Indemnity Agreement**"); and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Rents, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to in this Agreement as the "**Loan Documents**").

C. The Loan is further secured by a Guaranty of Payment dated the Effective Date from the Guarantors to Lender (the "**Guaranty**").

D. Borrower desires to amend the Loan Documents in order to, among other things, increase the amount of the Loan by **ONE HUNDRED SIXTY-THREE THOUSAND SEVEN HUNDRED SEVENTY-EIGHT AND NO/100 DOLLARS** (\$163,778.00) (the "**New Funds**").

## **AGREEMENTS:**

**NOW, THEREFORE**, in consideration of (i) the facts set forth above (which are incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided in this Agreement, (iii) the covenants and agreements contained in this Agreement, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged, the parties agree as follows:

1. **Definitions.** Any capitalized term not otherwise defined in this Agreement has the meaning set forth in the Mortgage.

2. **Outstanding Principal Balance.** Borrower agrees that the outstanding principal balance of the Loan as of the date of this Agreement (and prior to the disbursement of the New Funds) is **FOUR MILLION FOUR HUNDRED FORTY-EIGHT THOUSAND SIX HUNDRED SIXTY-ONE AND NO/100 DOLLARS** (\$4,448,661.00).

3. **Amended and Restated Note.** Concurrently with the execution and delivery of this Agreement and as a condition precedent to Lender's disbursement of the New Funds, Borrower must execute and deliver to Lender an Amended and Restated Promissory Note dated the date of this Agreement in the original principal amount of **FOUR MILLION SIX HUNDRED TWELVE THOUSAND FOUR HUNDRED THIRTY-NINE AND NO/100 DOLLARS** (\$4,612,439.00) (the "**Amended and Restated Note**") made payable to the order of Lender and due on March 3, 2024. Any reference in any Loan Document to the "Note" refers to the Amended and Restated Note.

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4. **Release and Waiver of Claims.** In consideration of Lender's agreement to enter into this Agreement and to the disbursement of the New Funds, Borrower and the Guarantors jointly and severally agree as follows:

(a) **General Release and Waiver of Claims.** Borrower and the Guarantors jointly and severally release and forever discharge Lender and its respective successors, assigns, partners, directors, officers, agents, attorneys, administrators, trustees, subsidiaries, affiliates, beneficiaries, shareholders, representatives, agents, servants, and employees from any and all rights, proceedings, agreements, contracts, judgments, debts, costs, expenses, promises, duties, claims, demands, cross-actions, controversies, causes of action, damages, rights, liabilities, and obligations, at law or in equity whatsoever, known or unknown, suspected or unsuspected, choate or inchoate, whether past, present, or future, now held, owned, or possessed by Borrower and/or any Guarantor, or which Borrower and/or any Guarantor may hereafter hold or claim to hold from the beginning of time to the date of this Agreement under common law or statutory right, known or unknown, arising directly, indirectly, proximately, or remotely out of the Note, the Mortgage, or any of the other Loan Documents, including, without limitation, any and all rights, proceedings, agreements, contracts, judgments, debts, expenses, promises, duties, claims, demands, cross-actions, controversies, causes of action, damages, rights, liabilities, and obligations whether based upon tort, fraud, breach of any duty of fair dealing, breach of confidence, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy, or any claim for wrongfully accelerating the Note, or any of them, or wrongfully attempting to foreclose on any collateral relating to the Note, contract, or usury, but only to the extent that the foregoing arise in connection with events which occurred prior to the date of this Agreement. Without limiting the generality of the foregoing, this release includes the following matters: (a) all aspects of this Agreement, the Note, the Mortgage, the other Loan Documents, and the negotiations between or on behalf of Borrower, the Guarantors, and Lender and the demands and requests by Lender of Borrower and the Guarantors concerning this Agreement and the other Loan Documents, including, but not limited to, all meetings, telephone calls, correspondence, and/or other contacts among or on behalf of Borrower, the Guarantors, and Lender incident to the attempts of said parties to reach an agreement in connection herewith, or in connection with the Note, the Mortgage, or the other Loan Documents and the attempt(s) of Lender to collect the Note, and (b) the exercise by Lender of its rights under the Note, the Mortgage, or any of the other Loan Documents or at law or in equity.

This release is intended to release all liability of any character claimed for damages, of any type or nature, for injunctive or other relief, for attorneys' fees, interest, or any other liability whatsoever, whether statutory, or contractual or tort in character, or of any other nature or character in any way related to any and all matters and dealings of any nature whatsoever asserted or assertable by or on behalf of Borrower and/or any Guarantor against Lender, including, without limitation, any loss, cost, or damage in connection with, or based upon any breach of fiduciary duty, breach of any duty of fair dealing or good faith, breach of confidence, breach of funding commitment, breach of any other duty, breach of any statutory right, fraud, usury, undue influence, duress, economic coercion, conflict of interest, negligence,

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bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with corporate or other governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy, or any other cause of action, but only to the extent that the foregoing arise in connection with events which occurred prior to the date of execution of this Agreement.

Each of Borrower and the Guarantors understands and agrees that this is a full, final, and complete release and agrees that this release may be pleaded as an absolute and final bar to any or all suit or suits pending or which may thereafter be filed or prosecuted by Borrower and/or any Guarantor, or anyone claiming by, through or under Borrower and/or any Guarantor, in respect of any of the matters released by this Agreement, and that no recovery on account of the described matters may hereafter be had from anyone whomsoever, and that the consideration given for this release is no admission of liability and that neither Borrower nor the Guarantors nor those claiming under any of them will ever claim that it is.

(b) Releases Binding on Affiliates of Borrower and the Guarantors. The provisions, waivers, and releases set forth are binding upon Borrower, the Guarantors, and their respective agents, employees, representatives, officers, directors, general partners, limited partners, joint shareholders, beneficiaries, trustees, administrators, executors, heirs, subsidiaries, affiliates, employees, servants, and attorneys.

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

(a) The representations and warranties in the Mortgage and the other Loan Documents are true and correct as of this date.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Note, 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 thereunder.

(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, the Guarantors 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 this date, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified in this Agreement.

(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

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to perform the Loan Documents as modified in this Agreement. The execution and delivery of this Agreement and the performance of the Loan Documents as modified in this Agreement 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. **Title Policy.** As a condition precedent to the agreements contained in this Agreement and Lender's disbursement of the New Funds, Borrower shall, at its sole cost and expense, cause Acquest Title, as agent for Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 19924-1-2017020057-2017.72307-210902022 (the "**Title Policy**"), as of the date this Agreement is recorded, reflecting the recording of this Agreement, increasing the amount of insurance to **FOUR MILLION SIX HUNDRED TWELVE THOUSAND FOUR HUNDRED THIRTY-NINE AND NO/100 DOLLARS** (\$4,612,439.00), 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, the past due Taxes, and any other encumbrances expressly agreed to by Lender.

7. **Reaffirmation of Guaranty.** Each Guarantor hereby 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 the Guarantors in the Guaranty are, as of this date, true and correct and the Guarantors do not know 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.

8. **Expenses.** As a condition precedent to the agreements contained in this Agreement, Borrower shall pay all reasonable 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.

9. **Miscellaneous.**

(a) This Agreement is governed by and must be construed in accordance with the laws of the State of Illinois.

(b) This Agreement may not be construed more strictly against Lender than against Borrower or the Guarantors merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, the Guarantors and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, the 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 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 to be legally bound by the terms and provisions of this Agreement, of its own free will, without promises or threats or the exertion of duress upon it. The signatories state that they have read and understand this Agreement, that they intend to be legally bound by it and

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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, nothing contained in this Agreement may be considered to constitute Lender a venturer or partner of or in any way associated with Borrower or the Guarantors nor will privity of contract be presumed to have been established with any third party.

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

(e) This Agreement binds and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage", the "Assignment of Rents" or the "Loan Documents" contained in any of the Loan Documents should be considered to refer to the Note, the Mortgage, the Assignment of Rents and the other Loan Documents as amended. The paragraph and section headings used in this Agreement are for convenience only and shall not limit the substantive provisions hereof. All words in this Agreement that are expressed in the neuter gender should be considered to include the masculine, feminine and neuter genders. Any word in this Agreement 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 Agreement 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 obligations under this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK—  
SIGNATURE PAGE FOLLOWS]**


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

**BORROWER:**

**1140 W. WILSON FLATS LLC**, an Illinois limited liability company

By: **CEDAR 1140 MANAGER LLC**, a Delaware limited liability company, its Manager


By:   
\_\_\_\_\_  
Alex Samoylovich, Manager

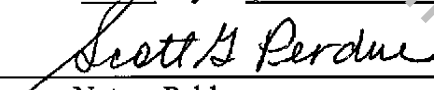
Property of COOK COUNTY CLERK'S Office

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 Alex Samoylovich, Manager of **CEDAR 1140 MANAGER LLC**, a Delaware limited liability company, in its capacity as the Manager of **1140 W. WILSON FLATS 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 as such Manager, 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 said limited liability companies, for the uses and purposes therein set forth.

**GIVEN** under my hand and notarial seal this 15 day of December, 2021.



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

My Commission Expires:  
4/26/2025

**[SIGNATURES CONTINUE ON FOLLOWING PAGE]**

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[SIGNATURES CONTINUED FROM PRECEDING PAGE]

**GUARANTOR:**



\_\_\_\_\_  
**ALEX SAMOYLOVICH**

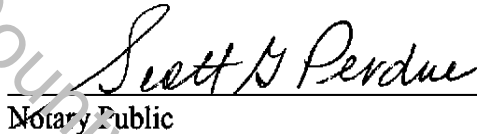
STATE OF ILLINOIS     )  
  ) .ss  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, **DO HEREBY CERTIFY** that **ALEX SAMOYLOVICH**, 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 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 15 day of December, 2021.

[SEAL]



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


[SIGNATURES CONTINUE ON FOLLOWING PAGE]



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[SIGNATURES CONTINUED FROM PRECEDING PAGE]

GUARANTOR:

  
\_\_\_\_\_  
WILLIAM MURPHY

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 **WILLIAM MURPHY**, 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 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 15 day of December, 2021.



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

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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[SIGNATURES CONTINUED FROM PRECEDING PAGE]

GUARANTOR:

*Mark Heffron*  
\_\_\_\_\_

MARK HEFFRON

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 **MARK HEFFRON**, 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 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 15 day of December, 2021.

[SEAL]



*Scott G Perdue*  
\_\_\_\_\_

Notary Public

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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[SIGNATURES CONTINUED FROM PRECEDING PAGE]

**LENDER:**

**CIBC BANK USA**, an Illinois banking corporation

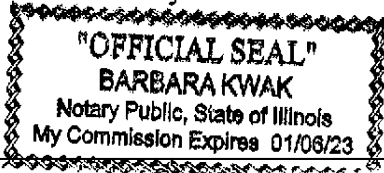
By: Bridget Morton  
Name: Bridget Morton  
Title: Managing Director

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 Bridget Morton, the M/D of **CIBC BANK USA**, an Illinois banking corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such M/D, 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 banking corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 15 day of Dec, 2021.

[SEAL]



[Signature]  
Notary Public

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## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE PROPERTY

#### PARCEL 1:

LOTS 251 AND 252 IN WILLIAM DEERING SURRENDEN'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

SUB-LOT 9 IN THE SUBDIVISION OF LOTS 253 TO 262 IN WILLIAM DEERING SURRENDEN'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

### PERMANENT TAX INDEX NUMBERS

14-17-207-015-0000  
14-17-207-017-0000

### PROPERTY ADDRESS OF PREMISES:

1140 West Wilson Avenue  
Chicago, Illinois 60640