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Doc#. 2235728220 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 12/23/2022 12:20 PM Pg: 1 of 10

THIS INSTRUMENT PREPARED BY:

Christyl Marsh
Cohen, Salk & Hoffman, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062

AND AFTER RECORDING MAIL TO:

Julianna Carpenter
First Eagle Bank
1040 W. Lake Street
Hanover Park, Illinois 60133

FIRST AMERICAN TITLE
FILE # 2895285M

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (hereinafter referred to as this "Modification Agreement") made as of December 15, 2022, by and among **2M Square FB, LLC**, an Illinois limited liability company ("Borrower"), **Martin Barboza** and **Mathew Focht** (each a "Guarantor," and collectively, the "Guarantors") (Borrower and Guarantors are hereinafter each sometimes individually referred to as an "Obligor" and are collectively referred to as the "Obligors,") and **First Eagle Bank**, its successors and assigns ("Lender").

WITNESSETH:

WHEREAS, Lender previously extended to Borrower a term loan in the original principal amount of One Million One Hundred Twenty Thousand and 00/100 Dollars (\$1,120,000.00) (as modified from time to time, the "Loan"), and to evidence the Loan, Borrower executed and delivered to Lender that certain promissory note dated June 8, 2018 in the original principal amount of One Million One Hundred Twenty Thousand and 00/100 Dollars (\$1,120,000.00) (as modified, restated or replaced from time to time, the "Note"), which Note is secured, in part, by the following documents (the following documents and any and all other instruments executed by any Obligor or any other grantor, as modified, restated or replaced from time to time, are hereinafter collectively referred to as the "Loan Documents"):

- (i) mortgage, security agreement, assignment of leases and rents and fixture filing dated as of June 8, 2018, made by Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office"), as Document No. 1817141069 (the "Mortgage") on property commonly known as 2535 N. Milwaukee Avenue, Chicago, Illinois and legally described on **Exhibit A** attached hereto and made a part hereof (the "Premises");
- (ii) assignment of rents and leases dated as of June 8, 2018, made by Borrower in favor of Lender, recorded in the Recorder's Office as Document No. 1817141070 (the "Assignment of Rents");

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- (iii) guaranty of payment dated as of June 8, 2018 made by Guarantors in favor of Lender (the "Guaranty"); and
- (iv) environmental indemnity agreement dated as of June 8, 2018 made by Obligors in favor of Lender.

WHEREAS, Obligors are desirous of (i) increasing the principal sum of the Note to \$1,287,500.00, and (ii) making certain other changes thereto, and Lender is willing to consent to such changes subject to the terms and provisions hereinafter provided.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Mortgage held by Lender is a valid, first and subsisting lien on the Premises (as defined in the Mortgage) and that the execution of this Modification Agreement will not impair the lien of said Mortgage and that there is no existing second mortgage or other liens subsequent to the lien of the Mortgage held by Lender that will not be paid in full and released concurrently herewith (for breach of which conditions, or either of them, this Modification Agreement shall not take effect and shall be void), **IT IS AGREED AS FOLLOWS:**

1. The parties represent and agree that the foregoing recitals are true and correct.
2. As of the date hereof, the total outstanding principal balance of the Note is \$1,027,564.56. Concurrent with the execution of this Modification Agreement, Borrower shall execute and deliver to Lender an amended and restated promissory note of even date herewith in the principal amount of One Million Two Hundred Eighty-Seven Thousand Five Hundred and 00/100 Dollars (\$1,287,500.00), payable to the order of Lender (the "Amended Note"). Each reference in the Loan Documents to the term "Note" shall hereafter be deemed to be a reference to the Amended Note. Each reference in the Loan Documents to the term "Loan" shall hereafter mean that certain \$1,287,500.00 term loan made by Lender to Borrower and evidenced by the Amended Note.
3. The second sentence of Paragraph 30 of the Mortgage is hereby amended and restated in its entirety to read as follows:

"Mortgagor shall furnish to Mortgagee such financial information regarding Mortgagor, its constituent partners or members, as the case may be, the Premises, any guarantor of the Note, and any other obligation on the Loan, as Mortgagee may from time to time reasonably request, which shall include, without any further request therefor, (i) annual financial statements for the Premises including a balance sheet, statement of income and rent roll for the Premises (if applicable), no later than one hundred eighty (180) days after the end of each year, all in form, scope and detail satisfactory to Mortgagee and certified by the chief financial officer or other appropriate officer, partner or member of Mortgagor, (ii) annual filed federal tax returns of Mortgagor, with all schedules attached, no later than one hundred eighty (180) days after the end of each year, and (iii) annual audited financial statements for Mortgagor and the Premises and annual financial statements and annual filed federal tax returns, with all schedules attached, for any guarantor of the Note no later than

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one hundred eighty (180) days after the end of each year, together with an unqualified accountant's opinion in a form satisfactory to Mortgagee and an operating budget for the Premises for the next year. All such financial reporting shall be certified by such party to be true, correct and complete, in each case."

4. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Amended Note and this Modification Agreement.

5. Except for the modifications stated herein, the Amended Note and Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the Amended Note and other Loan Documents and each other instrument or agreement delivered by any Obligor to or for the benefit of Lender in connection with the amended Loan shall remain in full force and effect in accordance with their respective terms and the execution and delivery of this Modification Agreement shall not operate to waive any rights or remedies that Lender may have with respect to the Amended Note and other Loan Documents, to forgive or waive any violation, default or breach under the Amended Note or any other Loan Document, or to obligate Lender in any manner to make any further extensions of credit other than as expressly set forth herein.

6. Contemporaneously with the execution of this Modification Agreement by Lender, Obligors shall pay to Lender a non-refundable modification fee in the amount of \$2,522.26, plus all of Lender's attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification Agreement, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees necessitated by or otherwise relating to this Modification Agreement (the "Additional Fees"). If any of the Additional Fees are not paid at the time this Modification Agreement is executed by Lender, such Additional Fees shall be paid by Obligors within five (5) days after written demand therefor by Lender, and if not timely paid, they shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate (as defined in the Amended Note).

7. Concurrent with the execution of this Modification Agreement, Mathew Focht shall execute and deliver to Lender a Junior Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing encumbering the real property owned by Mathew Focht and located at 226 W. St. Paul Avenue, Chicago, Illinois (the "Junior Mortgage"), as additional collateral securing repayment of the Loan. All references in the Amended Note and other Loan Documents to the "Loan Documents" shall be deemed to include the Junior Mortgage.

8. The Premises described in the Mortgage shall remain in all events subject to the lien, charge or encumbrance of the Mortgage, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to affect the lien, charge or encumbrance of the Mortgage, 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 whomsoever may now or hereafter be liable under or on account of the Amended Note, the Mortgage and/or the Assignment of Rents, 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.

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9. This Modification Agreement shall extend to and be binding upon each of the Obligors and their respective heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

10. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Amended Note, the Guaranty and other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that he or it have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Amended Note, the Guaranty and other Loan Documents, as so amended.

Without limiting the generality of the foregoing paragraph, each Guarantor hereby further represents and warrants to the Lender with the intent that the Lender rely thereon, as follows with regard to the Guaranty, as hereby modified: (a) the Guaranty is in full force and effect and is binding and enforceable against the Guarantor in accordance with its terms; (b) the Guarantor irrevocably consents and agrees to the Borrower's execution and delivery of the Amended Note and this Modification Agreement; (c) the liability of the Guarantor to the Lender under the Guaranty shall in no way be affected, modified, altered, or discharged in any fashion by the Borrower's execution, delivery or performance of the Amended Note and this Modification Agreement; (d) the Guarantor hereby restates and reaffirms to Lender all terms and provisions of the Guaranty as if set forth in full herein; and (e) the Guarantor does not possess any claims, defenses, offsets, or counterclaims against the enforcement of the Guaranty as of the date hereof, and any and all such claims, defenses, offsets and counterclaims, whether known or unknown, are forever waived and released, and the Guarantor is unconditionally liable under the Guaranty, for the payment and performance of all present and future indebtedness and all other obligations described therein.

11. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois (exclusive of choice of law principles), including all matters of construction, validity and performance.

12. This Modification Agreement constitutes the entire agreement between the parties with respect to the aforesaid modification and shall not be amended or modified in any way except by a document in writing executed by all of the parties thereto.

13. This Modification Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

14. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON

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CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF OBLIGORS AND LENDER WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR THE TRANSACTION RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY OBLIGOR OR LENDER MAY FILE A COPY OF THIS EXECUTED MODIFICATION AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OBLIGOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

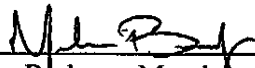
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IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

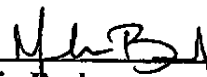
Borrower:


2M Square FB, LLC, an Illinois limited liability company

By: 
Martin Barboza, Member

By: 
Mathew Focht, Member


Guarantors:


Martin Barboza


Mathew Focht

Lender:

First Eagle Bank

By: 
Name: Faruk Daudbasic
Title: Senior Vice President

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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 **Martin Barboza and Mathew Focht**, the Members of **2M Square FB, LLC**, an Illinois limited liability company, and known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as such Members of said limited liability company, pursuant to authority given by the members of said limited liability company, as their 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 12TH day of December, 2022.



Angelika Dojia
Notary Public

My Commission Expires Jul 06, 2023

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 **Martin Barboza** personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 12TH day of December, 2022.



Angelika Dojia
Notary Public

My Commission Expires Jul 06, 2023

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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 **Mathew Focht** personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 12TH day of December, 2022.

Angelika Dobiya



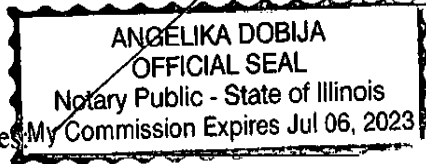
My Commission Expires:

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 **Faruk Daudbasic**, a Senior Vice President of **First Eagle Bank**, known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice President 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 bank.

Given under my hand and notarial seal this 12TH day of December, 2022.

Angelika Dobiya



My Commission Expires:

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STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that **Mathew Focht** personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this _____ day of _____, 2022.

Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that **Faruk Daudbasic**, a Senior Vice President of **First Eagle Bank**, known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice President 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 bank.

Given under my hand and notarial seal this 13th day of DECEMBER, 2022.

Michael Kornecki

Notary Public

My Commission Expires: 08/18/2026



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EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

PIN: 13-25-315-033-0000

Address: 2535 N. Milwaukee Avenue, Chicago, Illinois 60647

LOTS 27 AND 28 IN LOGAN SQUARE ADDITION TO CHICAGO, BEING A SUBDIVISION OF LOT 3 IN COUNTY CLERK'S DIVISION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.